10. *Clothing Workers (Canton Mfg. Corp.)*, 171 NLRB 641 (1968) (Amalgamated Clothing Workers violated the law by interrogating employees and refusing to process employee grievances in an attempt to discourage the employees from consulting the National Labor Relations Board.)

11. *Simmons* v. *Avisco, Local 713, Textile Workers Union*, 350 F. 2d 1012 (4th Cir. 1969) (Textile Workers Union was sued by one of its own members for damages caused by the union's unlawful suspension of the member during an investigation of alleged election fraud. The jury's award of $15,000 in damages was upheld on appeal.)

12. *Clothing Workers Union (Jaymar Ruby, Inc.)*, 151 NLRB 555 (1965) (Union violated the law when it threatened two employees that they would lose their insurance benefits if they failed to pay fines imposed for missing union meetings.)

13. *North Carolina* v. *Walker*, —— S.E. 2d ——, 47 LRRM 2981 (N.C. Sup. Ct. 1960) (Several members and officers of Textile Workers Union were found guilty of conspiracy to explode a bomb in a textile plant in order to make a strike there more effective.)

14. *Textile Workers Union (Charles Weinstein Co.)*, 123 NLRB 590 (1959) (Textile Workers Union business agent unlawfully restrained and coerced employees by threatening and kicking company vice president who was entering plant gate. Employees were threatened and assaulted by union members in violation of the law.)

15. *Taylor Fibre Co.* v. *Textile Workers Union*, 151 A. 2d 79, 44 LRRM 2110 (Pa. Sup. Ct. 1959) (Court properly issued injunction prohibiting Textile Workers Union from continuing to engage in illegal mass picketing, threats and intimidation during strike.)

16. *National Automotive Fibres*, 121 NLRB 1358 (1959) (Textile Workers Union violated the law when it caused employee to be discharged because he did not pay union dues while he was on layoff. Employee tried to withdraw from union when on layoff but union refused because employee owed the union a fine for not attending meetings.)

17. *Ex parte Evett*, 89 So. 2d 88, 38 LRRM 2287 (Ala. Sup. Ct. 1956) (Textile Workers Union held in contempt of court for disobeying the court's restraining order against unlawful picketing including coercion, intimidation and use of physical restraint against employees and job applicants. Strikers severely beat applicants so that medical care was required, called them abusive names, threatened them, and broke their car windows.)

18. *New Orleans Laundries*, 114 NLRB 1077 (1955) (Clothing Workers Union violated the law when its business agent threatened employees that they would be discharged if they continued to support rival union and engage in activity on behalf of rival union. Clothing Workers Union also violated labor law by refusing to process grievances of employees who were trying to get different union.)

19. *Wortex Mills* v. *Textile Workers Union*, 109 A. 2d 815, 35 LRRM 2132 (Penn. Sup. Ct. 1954) (Textile Workers Union was enjoined from engaging in unlawful mass picketing which the court found to be accompanied by threats and intimidation of employees. Union was also required to pay employer over $66,000 in damages caused by the unlawful strike.)

20. *Anniston Yarn Mills, Inc.*, 103 NLRB 1495 (1953) (Textile Workers Union violated labor laws by causing employer to cancel a nonunion employee's seniority because of her failure to participate in a strike and her nonunion status.)

21. *Royal Cotton Mill* v. *Textile Workers Union*, 67 S. E. 2d 755, 29 LRRM 2142 (N. C. Sup. Ct. 1951) (North Carolina Supreme Court upheld contempt of court citations against members of Textile Workers Union for wilfully and contemptuously disobeying court order prohibiting mass picketing and assault of nonstriking employees.)

22. *NLRB* v. *Acme Mattress Co.*, 192 F. 2d 524 (7th Cir. 1951) (International Union held liable for wrongful acts of Textile Workers Union representative who caused discharge of employee in return for calling off strike and signing contract.)

23. *Erwin Mills* v. *Textile Workers Union*, 67 S. E. 2d 372, 29 LRRM 2092 (N. C. Sup. Ct. 1951) (Textile Workers Union members were held in contempt of court for not obeying restraining order which prohibited mass picketing and acts of violence, force, coercion and intimidation.)

24. *Grist* v. *Textile Workers Union*, 82 A. 2d 402, 28 LRRM 2405 (R. I. Sup. Ct. 1951) (Textile Workers Union picketed nonunion plant during nationwide strike. Pickets used threats, insults and force to keep nonunion employees from entering plant.)

25. *Bloomsburg Mills* v. *Textile Workers*, 26 LRRM 2024 (Pa. Ct. Com. Pls. 1950) (Court issued injunction against Textile Workers Union engaged in unlawful picketing. Court found that picketing was accompanied by violence, threats, assault, intimidation and molesting of nonstriking employees. Pickets also found to have damaged employees' cars and trespassed on private property. Several employees, including women, were kicked and assaulted as they attempted to enter the plant.)

REVOLUTIONARY TEACHING SYSTEM

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 4, 1977

Mr. McKINNEY. Mr. Speaker, a constituent, Dr. Peter C. Goldmark, has developed an electronic teaching device that encompasses a number of significant technological breakthroughs. If fully utilized the system could serve to bridge cultural and educational gaps in this country and throughout the world.

The system, known as rapid transmission and storage (RTS) embodies several unique capabilities. Dr. Goldmark has developed a highly technological process that enables the "packing" of up to 30 hours—60 half-hour lessons—of audio and visual information onto a conventional 1-inch magnetic tape. The lessons consist of a continuous sound format accompanied by still pictures. The still pictures are used to conserve space on the tape, however, moving pictures can be used when it is necessary for clarity. The tape is played back on a small mobile piece of transmission equipment, similar to a portable tape machine. The machine when hooked up to conventional television sets can transmit the 60 different half-hour lessons simultaneously to as many as 30 different television monitors. An electronic coding method enables each professor to chose any one of the 60 different lessons.

The system can also be used in conjunction with an educational or commercial television station. During the 8-hour period when the station is normally off the air, over 240 different half-hour lessons can be transmitted and received for the next day's use in a designated learning center. The material can be used as many times as is desired. When a sufficient quantity and variety of instructional material is developed and available, the RTS system would permit the transmission and storage of 40 hours of instructional material to be received and shown on one's home TV set.

North Carolina's community college system is the first to put the RTS to work. Lesson material is in preparation for 10 study centers in the Charlotte area, and lessons will eventually be extended to the 57 other institutions in North Carolina's community college system. Other community colleges joining in the initial RTS program are in Chicago and Glen Ellyn, Ill., Costa Mesa, Calif., Eugene, Oreg., and Kansas City. It is hoped that these programs will be able to expand the ability of the community colleges to deliver educational services closer to where people live and work, without a large investment in additional facilities.

I would like to gratefully recognize the contribution of the Department of Housing and Urban Development (HUD) whose funding of the rural society project enabled Dr. Goldmark to develop the RTS system. It is my hope that the system will reduce the gap between the city and country, giving those in less populated areas access to the many cultural and educational advantages that exist in the more densely populated areas.

Dr. Goldmark is president of his own company, the Goldmark Communications Corp. of Stamford, Conn. He holds more than 160 patents and is responsible for the invention of the long-playing record and the color television.

SENATE—*Wednesday, October 5, 1977*

(Legislative day of Tuesday, October 4, 1977)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. EASTLAND).

The PRESIDENT pro tempore. Our guest chaplain this morning is the Reverend E. J. Singletary, Church of the Nazarene, Jackson, Miss.

PRAYER

The Reverend E. J. Singletary, Church of the Nazarene, Jackson, Miss., offered the following prayer:

Our Father, we thank You for present privileges and past blessings. We come to share with these men in a prayer for Your blessings upon the proceedings of this day.

Grant us that sincere humility which gives You entrance into our affairs. Help us to pray, for no other resource offers such promise, as the apostle reminds us in James 1: 5: *If any of you lack*

*wisdom, let him ask of God, that giveth to all men liberally * * *.*

We ask that the judgments here shall bear the scrutiny of time, that the solutions will not return to haunt us but to bless us. Wisdom too late is a luxury we cannot always afford.

Breathe upon us that our work may be done with diligence and dignity. Oil the machinery of these proceedings by Your spirit. Give the peace which attends men and women of good will.

Father, we pray for the personal needs of these here today. They are bone of our bone and flesh of our flesh. Where there is sickness, heal; where there is sorrow, comfort; and where there is disappointment, encourage.

Grant that we may lift our spirit to You. "The world is too much with us" (William Wordsworth), and we are not enough with You. Give us of yourself that we may give our best to those we serve. Amen.

RECOGNITION OF LEADERSHIP

The PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of yesterday, Tuesday, October 4, 1977, be approved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President. I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on tomorrow, October 6, to consider judicial nominations, and recodification.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETING

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be permitted to meet until 12 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9 A.M. ON THURSDAY, FRIDAY, AND SATURDAY.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, tomorrow, and Friday, it stand in recess, respectively, until the hour of 9 o'clock a.m. on tomorrow, Friday, and Saturday. Of course, this can be changed.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have no further use for my time.

The PRESIDENT pro tempore. The Senator from Alaska is recognized.

MORATORIUM ON HUNTING OF BOWHEAD WHALES

Mr. STEVENS. Mr. President, the Eskimo people of Alaska need help in combating the adverse impact of the International Whaling Commission's ruling on a moratorium on subsistence hunting of bowhead whales.

I was delighted to learn that the Association on American Indian Affairs has joined those of us who have urged that the United States object to this moratorium.

In a well-reasoned statement, William Byler, executive director of AAIA, has urged our Federal Government to support the Eskimo people's continued utilization of the bowhead whale for subsistence purposes.

There are no people in the world who would seek the extermination of the bowhead whale less than the Alaskan Eskimo. They do not take these whales for commercial purposes; rather, as their forefathers have done since the beginning of Eskimo life, they have based a substantial portion of their culture and their social life on subsistence whaling.

I have urged that fears for the bowhead be met by enabling the Eskimo people to establish a voluntary self-imposed quota system. Any precipitate action by the Federal Government on a mandatory basis is doomed to failure.

I ask unanimous consent that Mr. Byler's statement be included in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF WILLIAM BYLER

The Association on American Indian Affairs urges that the United States object to the moratorium on subsistence hunting of bowhead whales by Alaska Eskimos voted by the International Whaling Commission. Our recommendation is based on the following consideration:

(1) The Commission has no jurisdiction over Alaska Eskimo subsistence whaling;

(2) The Eskimos possess aboriginal, constitutional, and statutory rights that would be abrogated by the imposition of a moratorium, and it is the duty of the United States as trustee to assert these rights;

(3) The United States and the Commission do not have the information necessary to support a conclusion that a moratorium should be imposed;

(4) The facts available to the United States indicate that a moratorium should not be imposed;

(5) Enforcement of any moratorium, in the absence of community consent, is likely to prove ineffective and could provoke serious social conflict;

(6) The imposition of a moratorium would have a devastating impact on Eskimo culture and society, on the mental health of the whaling villages, and on the psychosomatic wellbeing of the individuals affected; and

(7) A moratorium could produce a result opposite of that intended.

The work of the International Whaling Commission in the past has helped safeguard Eskimo life by protecting the bowhead from extinction through commercial exploitation. It would be senseless and tragic for the United States to succumb to the Commission's assault on Eskimo whaling and destroy the communities that have benefited most from the Commission's achievements.

The International Whaling Convention of 1946 is founded on the principles of voluntary compliance and self-regulation. These same principles should be permitted to operate in Eskimo villages today as in the past, because they have proven effective in protecting the bowhead whale.

The Eskimos of Alaska's whaling villages do not claim a right to exterminate the species. Such a proposition would be unthinkable to them since the bowhead is the basis of their unique culture and society, their identity. They claim a right to survive as a people.

ABORIGINAL RIGHTS AND JURISDICTION

The International Whaling Convention was designed to save the bowhead whale from extinction through the regulation of commercial whaling. It was not intended to regulate aboriginal subsistence hunting. Consistent with this interpretation, the United States has resisted any quota on bowheads taken by Alaska Eskimos for subsistence purposes until the 29th Session of the Commission, when it abstained.

It is a well-established principle of federal law that any limitation on aboriginal rights may not be lightly inferred from the acts of Congress, and these rights are presumed valid unless expressly taken. The convention contains no language authorizing the Commission to regulate or abolish Eskimo subsistence whaling. Congress, in ratifying the convention, had an opportunity to amend it to accomplish this purpose and did not do so. The inescapable conclusion is that Congress, with its plenary power over Indian affairs, chose not to delegate its power to the Commission and, therefore, the Commission lacks jurisdiction to limit the aboriginal rights of Eskimo whalers.

Since the acquisition of Alaska in 1867, the United States has acknowledged and respected the aboriginal rights of Alaska natives. The Treaty of Cession, the Alaska Organic Act of 1884 establishing a territorial government, and the Alaska Statehood Act of 1958 contain provisions prohibiting the disturbance of native populations in the use and occupancy of their lands in order to protect their aboriginal property rights and their subsistence activities. The Alaska Native Claims Settlement Act of 1971 is based on Congressional recognition of the continuing importance of subsistence hunting and fishing and conveyed to the natives title to forty million acres of land to protect their traditional economies and to permit them to develop their lands for income and employment.

Congress has repeatedly and expressly confirmed Alaska native hunting and fishing rights in its conservation legislation. For more than a century, acts of Congress limiting or prohibiting the killing of fur seals, wild animals, and wild birds and restricting fishing in Alaska have provided exceptions for subsistence use. International conventions ratified by Congress for the protection of the fur seal and migratory birds contain like exceptions.

Similarly, Congress exempted Eskimo subsistence whaling from the general provisions of the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. In so doing, Congress reaffirmed aboriginal rights and chose not to predicate them on the actions of the Commission.

Eskimo subsistence whaling is an integral and essential part of Eskimo culture and social structure, and these are constitutionally protected. Although the legal rights of Alaska Eskimos to cultural and social integrity are not absolute, the United States may subordinate these fundamental rights only upon a clear showing of a compelling and substantial government interest. This

interest cannot be pursued by means that broadly stifle personal liberties when the end may be achieved more narrowly.

The draft Environmental Impact Statement of August 1977 demonstrates no compelling and substantial interest of the United States that would be served by acceding to the Commission's action to justify truncating the fundamental liberties of its Eskimo citizens.

The DEIS suggests that, were the United States to exercise its legal right to object to the action, it "could lose credibility as a conservation force and its efforts in other international conservation forums may be compromised." To subordinate the constitutionally protected rights of Eskimo whaling communities to tactical considerations in international conservation negotiations is unworthy of the nation's high principles. The efforts of the United States to protect endangered species are successful because they are based on a strong ethical foundation and are supported by the American public. Its success and its public support could be eroded were the government to sacrifice the Alaska Eskimos to expediency in its efforts to limit internationally the commercial exploitation of species other than the bowhead whale.

The DEIS also states that objection to the Commission's action would contradict President Carter's public statements and actions. To the best of our knowledge none of these address the issue of the Commission's jurisdiction over Eskimo subsistence whaling. It is evident, however, that acquiescence to the Commission's ban on Eskimo whaling could compromise the President's campaign to strengthen human rights around the world and may impair our credibility with nations that view our national attitudes toward race and minorities with misgivings. Further, it would contradict the President's avowed support for policies that will strengthen rather than destroy Native American family and community life.

Congress did not intend that the Executive branch subordinate these vital government interests and the personal liberties of its Eskimo citizens to the actions of the Commission.

Failure to file an objection to the Commission's action would also violate the requirement that the United States must employ the least drastic alternative in seeking to preserve the bowhead whale. The Commission's action resorts to the most drastic alternative, and the United States would be called upon to enforce it against armed and unwilling village populations.

Under the Marine Mammal Protection Act and the Endangered Species Act, the United States has ample and unquestioned authority to halt any wasteful whaling practices and generally to regulate subsistence whaling if it is required to protect an endangered species. Regulation under these acts is likely to prove more temperate and humane.

Nevertheless this federal intrusion into the culture and society of Eskimo whaling communities is unwarranted. Community self-regulation, with federal encouragement and support, is the least drastic, most socially responsive alternative. It places the primary responsibility for preservation of the bowhead on those who have the most to lose by its destruction.

In light of the powers of Congress and its clear intent, compelling and substantial government interests, and the aboriginal and constitutional rights of the Eskimo, the United States is required to object to the Commission's action on Eskimo subsistence whaling.

THE EVIDENCE

The only possible justification for imposing a ban would be reasonable proof that the kill clearly and immediately threatens the survival of the species. That is, it must be shown that the Eskimos are a danger to themselves. This is not supported by the facts.

Before the United States can make an informed and valid judgment it is necessary to know with some reasonable degree of accuracy the abundance of the bowhead whale and its reproduction rate in order to assess the impact of Eskimo whaling and determine an acceptable level of harvest.

Estimates of current bowhead population abundance vary widely. Rice (1964) estimates a population size of 1,000; Harry (1973) between 1,000 and 3,000; Durham (1974) 2,500; Mitchell (1974) the high hundreds or low thousands; Fay (1975) about 1,000; and Scheffer (1976) 2,000. Marquette (1977) states, "A preliminary analysis of data obtained by OCSEAP surveys in 1976 suggests that as many as 800 bowhead whales may have migrated past Barrow during the spring survey period (25 April to June); given the protracted migration period (March until July) and the evidence of sightings and past catches of bowheads in the Chukchi Sea during the summer, it is unlikely that this number totally accounts for the current stock size."

Three 1977 reports by the Northwest and Alaska Fisheries Center of the National Marine Fisheries Services agree that present abundance estimates cannot now be made with the requisite precision and accuracy:

"Further examination of survey methodology will be required before the questions concerning precision and accuracy of estimates of total bowhead abundance might be answered."—Tillman.

"The question of bowhead population abundance remains unanswered. From data collected in 1976 a total estimate cannot be made."—Braham and Krogman.

"Reliable information on the natural history, numbers of animals, and migratory patterns with resepct to the bowhead population is not now available for proper evaluation of the biological effect of the Eskimo harvest and of the potential effect of oil spills."—Marquette.

The Marquette report indicates huge gaps in our knowledge of the natural history of the bowhead:

Little information on the biology of these animals is available;

Little is known about the reproduction and growth of bowhead whales;

The mating season for bowheads is not well defined;

The gestation and calving periods . . . are also not well defined for this species;

Information concerning fetuses and newborn calves of bowheads has been rarely recorded in the literature; and

We do not know how long the lactation period is nor how long calves remain with their mothers.

The DEIS confirms this glaring lack of information. With this as a basis for judgment, the Executive branch clearly has no scientific justification for acceding to the Commission's ban on Eskimo subsistence whaling or for imposing its own.

Available information on the Eskimo harvest past and present indicate that the United States should not impose limits on subsistence whaling.

A number of observers over the past fifty years note an increase in the bowhead population: Bailey and Hendee (1926), Rainey (1947), Mansfield (1971), Mitchell (1974), and Fay (1975). Marquette (1977) states Eskimo observers also report increased populations. Rice (1974) estimates that there was no population change during this century despite Eskimo whaling.

If, in fact, the population is increasing or stabilized—and there is no contrary indication—then contemporary subsistence hunting will not endanger the species, unless the kill is increased over time to the point of depletion. Concern has been expressed over recent increases in the number of bowheads harvested, those killed but lost, and those struck but lost. Available information suggests that the results of recent whale hunts probably fall within acceptable limits.

Data for the period 1973–75 indicate a 60% decrease in the number of bowhead whales harvested: 37 in 1973, 20 in 1974, and 15 in 1975. Eskimo hunters attribute the poor results in 1975 to ice conditions. The total harvest of 72 whales in this three-year period represents a 15% decrease over the period 1970–72, when 86 whales were taken.

Opposite to this trend is a sharp increase in the 1976 harvest when 48 whales were taken. Eskimo hunters attribute this to a greater abundance of whales and to good weather. A comparison of the harvest in the 1976 spring hunt (36 whales) and the 1977 spring hunt (26 whales) shows an overall decrease of 28 percent, despite a significant increase from 13 to 19 in the number of bowheads taken at Barrow.

The harvest of bowhead whales appears to have remained fairly constant throughout this century, except at Barrow. At Point Hope it has ranged between 0–10 for 53 of the 60 years reported and averaged 4.4 bowheads per year for the 60-year period. The most intensive harvest was during the four reported years in 1922 and 1924–26 when an average of 13 bowheads per year were taken. Over the past decade Point Hope has caught an average of 6.5 whales per year. In the three years 1975–77 it has taken an average of 6 whales and in 1977 it took only 2 whales. At Wainwright, the harvest has ranged between 0–3 bowheads for each of the 27 years reported and averaged 1.4 whales per year for a 27 year period. Over the past decade Wainwright has averaged 1.8 whales per year, and the result for the last three years falls slightly below this average. Kivalina has taken only 5 whales in the nine years reported and the one whale that it harvested in 1977 was its first whale in five years. Other villages harvested 0–3 bowheads in 27 of the 31 reports available and reported a total of only 71 bowheads taken since 1908.

The harvest at Barrow has been far more erratic over time than at other villages. In a number of years during the early part of this century, Barrow took fewer whales than Point Hope, but this has not occurred in the last 18 years. Since 1949 there have been 17 years when the harvest has ranged between 0–10 whales (including five years when no whales were taken) and 11 years when it ranged between 11–23 whales. Over the past decade Barrow has harvested an average of 13 whales per year compared with less than 6 whales per year for each of the two decades preceding it. However, during the years 1925–31, Barrow harvested an average of 10 bowheads per year and in 1925 took 19 whales, a harvest since exceeded only in 1976.[1]

The DEIS estimates that the harvest in the last decade is higher than at any other time. However, its data for the early years is based largely on reports from only two villages, Barrow and Point Hope, while in recent years, owing to improved monitoring, its data reflect results from nine villages. Our analysis of the data from these two villages indicated that the harvest falls within historic limits. The greatest annual harvests occurred in 1885 with 40 whales taken, 1896 with 39, and 1908 with 36. The greatest total harvest over two consecutive years occurred in 1908–09 when 60 whales were taken. (During this same year 10–12 whales were harvested at Icy Cape.) The decade when the most intensive harvesting occurred appears to be the 1920s.

[1] The results of the 1977 fall hunt are not available at this time.

There are undoubtedly many factors that determine year-to-year fluctuations in the harvest and the relatively constant rate of harvesting over time. A number of these are beyond the direct control of the whalers, among them: the exigencies of the weather, its affect on migration patterns, and the sheer luck of the chase. These would tend to balance out over time.

It appears that the most important human factor limiting the harvest is the level of effort, measured in the number of crews engaged in whaling. The evidence suggests that this, in turn, is governed by traditional, self-imposed community restraints on excessive hunting and that these restraints are directly related to community needs.

The DEIS suggests that the increased harvest in 1976 and the general increase in the past decade may be attributable to a sudden affluence resulting from the Alaska Native Claims Settlement Act of 1971 and from wage work, enabling more whalers to purchase boats and equipment. On the other hand, an increase in the cash economy could reduce community dependence on subsistence whaling, and time spent working for wages could reduce time available for hunting.

We suggest that one factor which most directly influences the number of crews whaling appears to be the result of the prior whaling season—that is, need.

The importance of the success of the prior season in determining the number of crews whaling is illustrated by the following table, which shows (a) the number of bowheads taken in the spring and fall seasons from 1973 to 1977 and (b) the number of crews whaling during the spring seasons.

	1973		1974		1975		1976		1977	
	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)
St. Lawrence	6	....	2	8	1	23	8	....	2	....
Kivalina	0	....	0	5	0	5	0	3	1	....
Point Hope	7	11	6	10	4	13	12	14	2	....
Wainwright	3	6	1	2	0	4	3	8	2	....
Barrow:										
Spring	15	28	6	21	10	30	13	36	19	....
Fall	2	....	3	....	0	....	10	....	....	....

In the spring of 1973 Point Hope, Wainwright, and Barrow reported a total of 45 crews whaling and a harvest of 25 whales. Barrow took 2 whales in the fall. In the spring of 1974 each village shows a decrease in the number of crews, with the most significant decreases occurring at Wainwright and Barrow. In the spring of that year, 33 crews engaged in the hunt, a 27% decrease over the prior year, and they harvested 13 whales, a 48% decrease. Barrow took 3 whales in the fall. Then in the spring of 1975, apparently to compensate for the sharp decrease in the 1974 harvest, the number of crews from these three villages increased to 47—the 1973 level; but, owing to weather conditions, the results were poor and only 14 whales were taken. Barrow took none in the fall. In the spring of 1976, following this same pattern, the number of crews increased to 58 and the number of whales harvested rose to 28—twice the spring harvest of the prior year, but only slightly above the level for 1973. The fall harvest at Barrow rose to the unprecedented level of 10 whales. The experience at St. Lawrence Island shows a similar pattern: the number of crews rose 300% to 23 in 1975 following poor results in 1974 when only 2 whales were taken. The significance of reports from Kavalina are obscured by the fact that no whales were taken from 1973 to 1976, but they probably reflect a maximum level of effort by this small village.

The importance of factors of opportunity and chance beyond the hunters' control are reflected in the lack of direct correspondence between the number of crews whaling and the number of whales harvested. The following table shows the total number of boats operating at Point Hope. Wainwright, and Barrow in the spring hunts; the number of whales taken; and the average number of whales taken per crew:

	Crews	Whales taken	Harvest per crew
1973	45	25	0.55
1974	33	12	.40
1975	47	14	.30
1976	58	28	.48

This is most vividly shown by the results from St. Lawrence Island where 8 crews took 2 whales in 1974 and 23 crews took only 1 whale in 1975.

The number of crews whaling in 1977 appears to indicate an important change in the factors controlling need. Owing to the great harvest in 1976, it would be expected that the number of crews would decline; but preliminary reports indicate that approximately the same number of crews were engaged in the spring of 1977. A decline in the cash economy and/or restrictions on the hunting of other species probably account for this. Greater federal efforts to enhance and stabilize the cash economy of the villages and conservation management based on the human ecology of the region rather than by species should reduce this sudden increase in reliance on the bowhead.

What causes special concern is the recent sharp increase in the numbers of bowheads reported killed but lost and struck but lost. Barrow accounted for all eight animals reported killed but lost in 1976 and 11 of 13 reported between 1973–76. Barrow and Point Hope together accounted for 30 of the 35 whales reported struck but lost in 1976 and 75 of 99 reported in 1973–76. The number of whales struck but lost in the spring of 1977 rose alarmingly to more than twice the number for the prior year.

The DEIS suggests that one of the factors contributing to an increase in the number of whales lost may be increased hunting by inexperienced crews of young men. It is presently impossible to guage the impact of inexperienced crews.

Improved monitoring may account, in part, for the increase in the number of whales reported lost. This might help explain differences among observers on the ratio of whales harvested to whales struck. Johnson et al. (1966) estimates that the ratio is 1:4 and Durham (1974) estimates 1:4 or 1:5. Scott (1951) and Marquette (1977) estimate 50 percent of all whales struck are not recovered. But monitoring is inherently difficult. Eskimo hunters point out that there may be considerable duplication in the count of whales lost. For example, a wounded whale is more likely to be struck again; a mortally wounded whale as struck but lost may be counted again as killed but lost. Occasionally a whale counted as struck but lost is harvested in another season. Abnormal weather conditions, an abundance of whales, and chance undoubtedly are factors in animal variations in the number of whales lost. For example, the number of St. Lawrence Island crews engaged in the hunt in 1974 and 1975 increased from 8 to 23, but the number of whales lost only increased from 2 to 4. At Barrow, the number of crews whaling in the spring of 1974 and 1975 increased from 21 to 30, but the number of whales lost decreased from 20 to 11. In any case, the number of whales lost by new crews can be expected to decline with experience. Federal funds for a program to assist whaling villages in training new crews might accelerate the learning process.

There is general agreement that equipment failures and a change in whaling methodology at Borrow contributes to an unnecessarily large number of whales struck but lost.

Eskimo whaling communities are acutely aware of the hazards associated with any significant increase in the number of whales killed and are seeking means to limit this without impairing their culture and society, and their health and general wellbeing. They have invited the United States to assist them in their efforts.

Eskimo community restraints have worked effectively in the past to limit the number of whales killed and the species has survived and may be increasing. There is no reason to believe that they will not work in the future and no evidence to support the Commission's drastic action.

ENFORCEMENT

The key to international conservation efforts is agreement by governments and peoples that the regulations imposed are just solutions to international problems. To the Eskimo people of Alaska, the action of the Commission to ban subsistence whaling is capricious and arbitrary. For the United States to disregard its own laws and fail to object to the action can only help undermine Eskimo respect for our laws.

It is virtually certain that Eskimos will not comply voluntarily and will attempt to continue to hunt. Enforcement of the action on an unwilling population that feels betrayed would be extremely difficult, with grave poliitcal consequences. At a minimum, one can foresee massive civil disobedience. At worst, the federal government might have to resort to armed intervention against its own people and order military occupation of Native villages in order to compel obedience to an international ruling in violation of long-standing American principles.

CULTURAL IMPACTS

Opposite to the uncertainty surrounding the impact of Eskimo whaling on the survival of the species is the certainty that a sudden, arbitrary and capricious ban on whaling would seriously disrupt, and might destroy, a complex economic and social structure that has evolved over thousands of years. The federal government has had two centuries in which to observe the devastating effects of its intervention into Native American community life.

It has long been the policy, if not the practice, of the United States to recognize and respect the cultural integrity of minority populations. The thrust of federal programs for Indian and Alaska Native people has been based on the recognition that cultural pluralism is a source of national strength. Where, as here, governmental intervention is proposed into a matter that is of such profound consequence for the survival of a people, the government must examine carefully and critically the importance of and the rationale for its action.

The destructive impact of government intervention is indicated by Alexander H. Leighton, M.D.[2], a member of our National Committee on Indian Health, in his statement objecting to the Commission's action:

"Subsistence whale hunting is of the first order of importance in terms of traditional Eskimo culture. It is vital to the development of skills, dignity, and cooperation; and these are important values to the mental health and psychosomatic wellbeing of Eskimo whale hunters. Any interference with the opportunity to continue the traditional hunt is a very serious matter and would undoubt-

[2] Dr. Alexander H. Leighton is Professor of Behavioral Sciences Emeritus, Harvard University; National Health Scientists of Canada; and Professor of Psychiatry and Preventive Medicine, Dalhousie University Medical School.

edly have adverse affects on mental health in the whaling villages and on the self-image and personality structure of the people affected."

"Eskimo hunters are the first to acknowledge that protecting the whale is essential to the preservation of their culture. For thousands of years, community self-regulation has proven successful in safeguarding the species. It should be encouraged, rather than thwarted, by government action."

Calories are not culture. The solution reached by the Soviet Union—using state whaling vessels to harvest bowheads and deliver them to its Eskimo population—provides for Eskimo physical needs but undermines their cultural integrity. For the United States to resort to solutions such as this would begin the transformation of independent, self-reliant and self-sufficient American Eskimo communities to welfare ghettos. The caloric intake of Eskimo people from bowhead whales can be replaced; but the cultural fabric of Eskimo life that is woven around the whale hunt cannot be.

Federal intervention would undermine vital family and social structures. These would in turn contribute to the circumstances leading to the break-up of Eskimo families, already a widespread problem in Native Alaska. Children separated from their families may suffer such severe distress that it interferes with their physical, mental, and social growth and development. Government intrusion into the cultural life of the community disrupting its subsistence economy and its traditional mechanisms for self-regulation could ultimately lead to the creation of a "culture of poverty" where large numbers of people feel hopeless, powerless, and unworthy, and where state intrusion becomes the norm rather than the exception.

Government intervention apparently has already begun dismantling the Eskimo economy. Federal and state interference with the Eskimos' ability to harvest other foods—including caribou, walrus and migratory birds—seems to have caused the villages to become more dependent on the bowhead than before and this in turn may ultimately threaten the species.

IMPACT ON CONSERVATION

Since the Bering Sea stock of bowhead whales became the subject of special attention by the Commission's Scientific Committee in 1972, the Commission has encouraged the United States to study the population abundance and natural history of the bowheads and the impact of Eskimo whaling on the species. It has also sought to limit waste—that is, the number of whales struck but lost. The failure of the United States to act promptly and the sharp increase in the number of whales lost led to the Commission's drastic action in 1977.

This action, if enforced, would help to defeat the Commission's own goals. To impose a ban on Eskimo harvest before the results of the studies in progress are analyzed is unscientific and unjustified. To interrupt subsistence whaling now would seriously impair the validity of studies seeking to understand the changing Eskimo subsistence economy over time and the impact of Eskimo whaling on the species. Moreover, if the Eskimos believe, as they now have reason to fear, that the information they have generously shared with scientific investigators will be used against them, they may refuse to cooperate any longer. This would result in a loss of the best source of information for learning more about the bowhead's natural history.

Moreover, successful enforcement of the ban could lead to an increased harvest of other whales and marine mammals, possibly endangering these species.

The leadership role of the United States in world conservation agreements has been made possible by the support of the American public for such efforts. Acquiesence by the federal government in an action that is arbitrary, in violation of domestic law, and dangerous to the Eskimo people can only lead to an erosion of this support. If the United States is required to employ military measures to suppress a defenseless aboriginal people, which it has pledged to protect, on the pretext of saving them from themselves, the impact on world public opinion could be catastrophic.

CONCLUSION

For the reasons stated above, we urge that the United States exercise its legal right to object to the Commission's action to ban Eskimo subsistence whaling, and we further urge that the federal government encourage and support Eskimo community self-regulation.

Mr. STEVENS. I yield back the remainder of my time.

The PRESIDENT pro tempore. Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized for not to exceed 15 minutes.

PANAMA CANAL TREATIES—NO. 12

Mr. ALLEN. Mr. President, this is the 12th speech in a series dealing with the proposed Panama Canal treaties. Yesterday I testified before the Senate Committee on Foreign Relations, and in lieu of full remarks in the Senate on the canal treaties, I obtained unanimous consent to have printed in the RECORD my testimony at the Foreign Relations Committee hearing. Today, Mr. President, I will discuss the historical background against which the United States negotiated the Hay/Bunau-Varilla Treaty, the treaty of 1903, which made possible the construction of the Panama Canal. Frankly, there is so much misinformation on this subject that perhaps the Senate will find advantage in a review of the facts as they actually occurred.

Although an isthmian canal had been contemplated from the time of Cortez, the first significant event leading to the construction of the canal was the treaty of 1846 with Colombia, then known as New Granada. Under the provisions of the treaty, New Granada guaranteed to the United States the exclusive right of transit across the Isthmus of Panama—the State of Panama, which was then a province of New Granada—"upon any modes of communication that now exist or that may be hereafter constructed."

So this language is really the forerunner of the rights and the property rights that the United States gained under the treaty of 1903 "upon any modes of communication that now exist or that may be hereafter constructed." In exchange, the United States guaranteed "positively and efficaciously" the "perfect neutrality" of the isthmus—I repeat, this sort of language goes away back, more than 100 years; the United States guaranteed "the perfect neutrality" of this area "positively and efficaciously," and further guaranteed New Granada's right of sovereignty in the isthmus. Pursuant to this agreement, the United States constructed the Panama Railroad, which now crosses the isthmus in the vicinity of the Panama Canal.

The discovery of gold in California in 1848 intensified the interest of the United States in a route across the isthmus. Ultimately, however, the single event which focused the full attention of U.S. citizens on the desirability of constructing a canal was the dramatic 1898 voyage of the battleship *Oregon* at the beginning of the Spanish-American War from the west coast of the United States around the Horn and into the Caribbean. Our first true modern battleship, the *Oregon* was in San Francisco when the *Maine* blew up in Havana Harbor. Victory over Spain in the Caribbean was dependent on the *Oregon's* presence. The warship was a beautiful and well equipped vessel, and with determined sailing, she did arrive off Cuba in time to play a crucial part in the battle of Santiago Bay. However, the trip took almost 70 days, highlighting the great necessity for an Isthmian Canal for expedited American naval operations. The long voyage of the *Oregon* was the great catalyst in firming American resolve to sever the continents.

Years prior, in 1850, as a first step, the construction of the Panama Railroad had begun. The railway was finished 5 years later at a cost of $8 million, six times the initial estimate. The world's first transcontinental railroad, its high construction cost which would just be a drop in the bucket compared to the costs today, of course, made it the most expensive rail line on Earth. Nevertheless, at a price of $25 in gold for a one-way ticket, it earned massive profits for its stockholders. Twenty-five dollars in gold, Mr. President, a high price in that day, was nevertheless considered quite a bargain inasmuch as a passenger could thereby reduce greatly the length of time required to remain in Panama during a transit from one ocean to the other. Panama was considered the most unhealthy region in the civilized world, and the less time spent there by a traveler, the better. During the construction of the railroad, for example, more than 6,000 construction workers died of cholera, dysentery, yellow fever, malaria, and smallpox—all diseases for which there was then no known cure.

So, Mr. President, thanks to this treaty of 1846 with New Granada and thanks to American initiative, the isthmus at Panama was spanned. So we have a long history of operations in Panama, in moving from one ocean to the other, then by railroad and now by canal. Under the terms of the treaty with New Granada, the United States was obliged to keep the railroad open and to protect it against any potential enemy, by force of arms if necessary. As a result, U.S. naval vessels were customarily stationed in the Caribbean off Colon and Panama City.

Way back then, Mr. President, we were given the right to defend the railroad and to keep the railroad open. So there is a parallel history between the situation regarding the canal today and the Panama Railroad of a century and a quarter ago.

That is one of the big objections to this treaty today, that it does not properly provide for defense of the canal. The construction of the terms of the treaty are in doubt, with Panama saying one thing and our negotiators saying another. I would say, Mr. President, that the express terms of the treaty would in-

dicate to my mind that the Panamanians have the proper construction of what the treaty means.

Way back 125 years ago it was provided that we would have a right to defend this method of going from one ocean to another, transiting the isthmus.

Now the point of recalling these facts, Mr. President, is to refute some of the present-day mythology surrounding the history of the efforts of our country in the Isthmus of Panama. The true facts are that the United States was deeply involved in Panama from a very early stage and that the work of the United States has been the critical element in establishing and maintaining safe routes of travel between the two oceans. A reexamination of the history of U.S. efforts in Panama confirms the tremendous investment of life and materiel required of the United States in its great national adventure in the Isthmus at Darien.

Most of us, for example, have forgotten the hard work of Admiral Ammen, who led seven expeditions to Central America between the years of 1870 and 1875 for the purpose of obtaining knowledge about where a canal should be built. Frankly, Mr. President, it was not at all obvious that the best route was the route ultimately taken, and much debate, as well as engineering surveys, ensued from the time of Admiral Ammen's initial expeditions until the time of decision to use the present route. The expeditions of Admiral Ammen were carefully done, and his results formed a basis for future efforts. Commenting on the Ammen expeditions, then President Grant commended the canal project to the American people with the statement, "An American canal, on American soil"—not a bad recommendation and certainly a sound concept.

To be sure, Mr. President, other nations attempted to compete with the United States in efforts to connect the oceans. Most notable of these was the effort made by the French under the leadership of Ferdinand de Lesseps. De Lesseps' claim to fame was considerable since he supervised the construction of the sea level canal at Suez. However, Suez had no relationship to Panama and de Lesseps met with no success when he tried to transpose the methods used at Suez to the pestilent-ridden jungles of Central America. The French effort collapsed in 1889 amid charges of embezzlement and corruption. Subsequent attempts to renew French construction succumbed rapidly to the returning jungle.

In 1899, after the events of the Spanish-American War, the United States established the Isthmian Canal Commission and placed the agency under the leadership of Rear Adm. John G. Walker. The Commission was charged with selecting a route somewhere across the isthmus and was given the further objective of recommending the type of canal to be built. Nicaragua, not Panama was recommended, and candidly, Mr. President, absent political considerations, the Nicaraguan route may well have been the proper choice and indeed may well be the proper choice now if the United States does choose to construct a sea level canal for the transit of major warships and supertankers.

So, Mr. President, Nicaragua was the preferred route; Nicaragua was viewed as a country with a healthier climate and a more stable government than Panama; Nicaragua had very strong support in the Congress, particularly in the Senate under the leadership of the great Senator from Alabama, John Tyler Morgan. Senator Morgan, of course, is known as the father of the Panama Canal, even though initially he supported the Nicaraguan route. Once the decision was made to construct a canal in Panama, Morgan, as chairman of the Senate Committee on Interoceanic Canals, threw his full energies into the Panamanian project.

But as I said, Mr. President, initially Nicaragua held the favored route; ultimately, however, at the culmination of what was then known as the Battle of the Routes, Congress on June 28, 1902, passed the Spooner Act to authorize the construction of an interoceanic canal in Panama.

This is in support of the discussion today, as to whether the entire Congress has to pass an act in addition to the Senate giving its advice and consent to the treaty.

You know, Mr. President, back in those days it was thought that the Congress had to authorize the President to take a major step in foreign policy, such as the initiative required to obtain canal rights in Panama. So they did pass this act called the Spooner Act to give to the President the authority to proceed. The Spooner Act involved the acquisition of territory, and we have certainly come a long way since those days because now we have an administration asserting, notwithstanding the clear language of the Constitution, that there is not even a need to obtain congressional authorization to cede U.S. territory to another nation. Yes, Mr. President, we are light-years removed from the way Government was conducted in 1902, even though only 75 years have elapsed.

The Congress gave the President authority in the Spooner Act to acquire from the Republic of Colombia "perpetual control of a strip of land" not less than 6 miles in width from the Caribbean Sea to the Pacific Ocean, and having obtained such property, thereafter to excavate, construct, and "perpetually maintain, operate, and protect thereupon a canal." So the Congress authorized the President to acquire this strip of land, and of course eventually President Theodore Roosevelt did acquire the strip of land. Yet the 95th Congress is being avoided entirely now that the administration wants to give this strip of land away.

But look at this, Mr. President. The Spooner Act contained some further provisions which should be of interest to the Senate. The President under the Spooner Act was further directed to maintain U.S. "jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as may be necessary to preserve order and preserve the public health thereon and to establish judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations."

The point I am making, Mr. President, is that this canal was no project lightly entered into by the United States. The Congress and people were deeply involved every step of the way. Great forethought went into the negotiations with Colombia and later with Panama. Great forethought went into the conditions under which the United States felt it would be acceptable for the United States to undertake the tremendous financial and human sacrifice that would be required to build this manmade wonder of the world. The matter was debated, studied, fought over, covered extensively in all the periodicals of the time, and only when great national consensus emerged was the project finally initiated.

How much different is the situation we face today. Our people are united in their resolve against these ill-advised, imperfectly drafted, and dangerous treaties, yet the administration and much of the national mass media have joined forces to attempt to ram these proposals down the throat of the Senate, to attempt to revise history, to attempt to reeducate our people—our people, Mr. President, understand already the history of the Panama Canal, because most of them grew up being told in their homes that its construction was perhaps our Nation's greatest peacetime accomplishment.

So, Mr. President, our people are going to have to be reeducated quite a bit if their resolve in opposition to these treaties is to be seriously shaken. It is going to take around-the-clock work by revisionist historians to convince our people that the construction of the Panama Canal was not a glorious achievement representing the very best of what is good about our country, a great work for peace and for humanity, an effort which produced benefits in medical science we are still enjoying today, and an achievement which lifted the Province of Panama from abject poverty, ignorance, and misery to a position of wealth and respect among Central American nations.

Efforts to revise history are well underway. For many months now and with greater and greater frequency, we hear accounts implying that the United States stole the Canal Zone from Panama and somehow, through intrigue, euchred the Panamanians out of their most valuable asset. These accounts conveniently overlook the simple fact that the only asset held by Colombia and later Panama was an accident of geography covered by a jungle into which only the brave or foolhardy dared to tread and from which few emerged.

Tomorrow, Mr. President, I plan to discuss the final events leading to the negotiation of the treaty of 1903, the Hay/Bunau-Varilla Treaty. My purpose will be to explain the circumstances under which the treaty was agreed upon and hopefully to refute the allegations of misconduct on the part of the United States in obtaining our rights in Panama. In my judgment, study of the history of

the treaty of 1903 is a worthy pursuit for all of us, because the American people are being told by many that we have something to be ashamed of in our acquisition of the Canal Zone. Mr. President, rather than shame, Americans should feel—and do feel—an immense sense of pride. A reexamination of the history of the period, rather than causing embarrassment, should reinforce our sense of appreciation for a great national achievement and should strengthen already strong resistance to any proposal which would tear down a work well done.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from New Mexico is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. SCHMITT. I yield.

AMENDMENT TO UNANIMOUS-CONSENT AGREEMENT—S. 2114

Mr. ROBERT C. BYRD. Mr. President, I am informed by Mr. MELCHER that he was unaware of the agreement entered into last night on the utility rate reform bill, S. 2114, and that he has an amendment he wants to call up. I, therefore, ask unanimous consent that a time limit of 1½ hours on the Melcher amendment be divided in accordance with the usual form.

Mr. BAKER. Reserving the right to object, and I will not object, Mr. President, Senator MELCHER spoke to me about this matter. We have no objection to amending the unanimous-consent request in that respect.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TIME-LIMITATION AGREEMENT—S. 1863

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with the distinguished minority leader and with the chairman of the committee and the ranking member.

I ask unanimous consent that at such time as S. 1863, Calendar Order 418, is called up and made the pending business before the Senate, there be a time agreement thereon of 3 hours to be equally divided between Mr. MCINTYRE and Mr. TOWER, that there be a time limit on any amendment of 30 minutes, a time limit on any debatable motion, appeal, or point of order of 20 minutes, and that the agreement be in the usual form.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That when the Senate proceeds to the consideration of S. 1863 (Order No. 418), a bill to authorize appropriations during the fiscal year 1978 for procurement of aircraft and missiles, and research, development, test, and evaluation for the Armed Forces, and for other purposes, debate on any amendment shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from New Hampshire (Mr. McIntyre) and the Senator from Texas (Mr. Tower): *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

Mr. ROBERT C. BYRD. I thank the Senator for yielding.

THE 20TH ANNIVERSARY OF SPUTNIK SATELLITE

Mr. SCHMITT. Mr. President, a number of Senators a few days ago had planned to enter into the RECORD statements related to the 20th anniversary of the first artificial satellite to be launched into orbit around the Earth; namely, the satellite of the Soviet Union commonly known as sputnik. That event occurred on October 4, 1957.

As a consequence of the activity surrounding the recent energy debates, we were unable to get together and suitably honor the beginning of the space age yesterday.

Today, individually, and I am sure for possibly several days, we will try to so honor that event.

It is hard for me to believe that it has only been 20 years for all that has happened to have happened as mankind has begun to move civilization off this planet and into space.

As with a few other historic events in our times, many individuals could remember exactly what they were doing and where they were when the announcement of the Soviet Union's success in space was made.

I happened to be on the west coast of Norway in a small farming community pursuing studies related to a line of research as a geologist that I was pursuing at the time, and living with a farm family in the area known as Sunnmörre. As I struggled through the use of Norwegian as the language of the area, I occasionally took a break from that effort to listen to the Voice of America. In so doing, I was informed of this great accomplishment by the Soviet Union and by mankind. I did not get much sleep that night as I reflected on something I had not thought about, other than in the reading of science fiction as a child. Then, as the days and months went by, during my year as a student at the University of Oslo, I began very quickly, I think, to realize the profound psychological impact that this event was having on the young people of the world.

The Oslo student community was not just Norwegians and Americans. It was Soviets, Polish, Indonesians, Africans, South Americans, young men and women from all over this world. There was almost no conversation during that time that I can remember that did not eventually end up discussing not only the event itself but the impact that space activities would have on the history of nations and the history of mankind. One could not be exposed to that interest in young people and not realize that the space era upon which we had entered would be a major, if not the major, influence on the future history of mankind.

Sputnik had great influence on the direction of science and the direction of engineering, technology, and education in the United States of America. We thought for some period of time that we were in a race, a very critical race, with the Soviet Union to reach the Moon. As it turned out, in 1968, for a variety of reasons, it was clear to most observers of the space scene that there was, in fact, no race; that the technological contest was unequal; that the United States was clearly capable of going to the Moon with men and returning those men safely to the Earth; that the Soviet Union was not, and I still believe today, is not capable of so doing.

That does not mean that the Soviet Union and other nations lack capability to operate in space with men and operated satellites, but the question of deep space travel and exploration and, in fact, civilization, is still largely a question that only the technological base of the United States can face. I think it more important, on, this 20th anniversary of the launching of the space age, that we should reflect on what history will think of this 20-year effort, largely dominated by the United States, what history, 100 years from now or 500 years from now or 1,000 years from now, will record as being the significant point or points during these two decades.

Mr. President, I believe very strongly that we can put ourselves roughly in the position of the historians of that future time and look back on the history of science, of technology, of nations and of mankind, and draw some general conclusions about what they will write. In the history of science, these historians will, I believe, view the effort to explore the Moon and to study space scientifically from space as a unique event in the history of science, an event that marked the time when scientists and man in general obtained their first-order understanding of a second planet. For the first time and only time could that be said.

The Moon offers a great insight into the early history of the Earth and now, for the first time, mankind could tap that insight. Man suddenly realized that his understanding of the Sun as viewed from the Earth was extremely primitive and that science now had a new platform outside the atmosphere from which to study the Sun, which drives this solar engine we call the Earth, around which we circle, and upon which we depend for our lives.

In the history of technology, these historians again, I think, will view the experience of the last 20 years as, roughly, a single event in time, for mankind, for the first time, vastly expanded the technological base on which we stand as a species to do new things, to do things that will solve crises such as energy crises, that will solve the crises of poverty, education, communications, disease, and so on; a technology base that, for the first time in human history, developed as a consequence of essentially peaceful activities and not the activities of war or activities related to war. To have another way of doing things, of developing a technology base should be taken, and I think will be taken, with great encouragement by future generations.

Those historians in that distant time that will look at the progress and history of nations also, I believe, will look upon the last 20 years as a unique event. They will record that the first truly spacefaring nation, the United States, was also the only nation of that time that was capable of defending, protecting, and replanting the very fragile seed of individual freedom—not only on the planet Earth, but elsewhere in space. That the United States, the only nation with both the idealism and the power to protect that fragile seed, should be, in fact, the first and leading spacefaring nation of the time will be a fact not lost on these future historians. In a very real, analogous sense, the United States has the same position in history that was maintained by the British nation for several centuries, when they were the dominant seafaring nation on this planet. It was through that dominance, directly or indirectly, that the seed of freedom came that our ancestors from all parts of the Earth planted on this land. It was through that influence and dominance that that seed was protected and grew and was nourished here.

We hold the same position in the broad scheme of things, I believe, with respect to space and the future of freedom, not only here on this planet, but elsewhere in the solar system.

But there are many, Mr. President, that would say the most critical element is, what will the long-term history of mankind record as a consequence of our efforts?

There I think we find the deepest and most psychologically impelling reason to honor this 20th anniversary and to continue to do so as time goes by, because mankind as a species through this 20-year period demonstrated that through the use of its technology, its minds, and its hope and dedication that it was willing to leave the planet Earth, to leave the planet of its origins, and commit itself to gravitational fields, to environment, completely alien to the evolutionary sequence through which mankind had evolved in the commitment to a representative or representatives of that species to orbit around the Moon.

A very fundamental bond was broken and new bonds were established in space.

Some day on the Moon, or on Mars, or somewhere in space, new civilizations will develop and those civilizations will tie their beginnings to the space era that beban 20 years ago.

Among the young people alive today, there are very probably the parents of the first Martians.

Mr. President, I reserve the remainder of my time.

Mr. GOLDWATER. Will the Senator yield?

Mr. SCHMITT. I am happy to yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, it is a distinct honor for me to follow the previous speaker, the Senator from New Mexico (Mr. SCHMITT), who was one of the few men to stand on the Moon. In fact, it is rather unique that in this body of 100 men we have the Senator from Ohio (Mr. GLENN) who was the first American to orbit the Earth and Dr. SCHMITT—as I first knew him—one of the few men to have walked on the Moon.

But, Mr. President, I would like to say a few things about the 20th anniversary of Sputnik, which occurred yesterday.

The Soviets beat us to it. But it was more the fault of our people that this happened because a man we remember too lightly, Dr. Robert Goddard, had for many years out on the deserts of New Mexico, been testing his rockets, testing his theories of rocket propulsion.

Mr. President, these theories were later applied by our scientists to the problem of propelling a rocket that would leave the gravitational force of the Earth and be allowed to orbit and be allowed to go out of orbit and to travel to the Moon, to Mars, and now we have rockets on their way to further planets.

I will never forget the day, Mr. President, that we sat in joint session in the House and heard President John Kennedy say that we were going to the Moon. I imagine that 98 percent of the people in that room thought that the President was a little off that day. But, sure enough, he knew what he was talking about. He had his plans well laid, his thoughts worked out, and we eventually did just that.

But in the doing of that, we accomplished far more than just putting a man on the Moon, or men on the Moon. We accomplished far more than bringing back species of rocks that we found up there.

To begin with, we had to create an organization to make this possible. So NASA replaced the old NACA and went to work on the massive problem of solving the problems that had to be solved to allow us to do what we have done in space.

The first head of NASA was Mr. Webb, who put this together. Then he was followed by Mr. James Fletcher, who in my mind did a wonderful job on this because it was he who put it together in a way that made it work.

The problem immediately came up, not so much as how to get there, because our scientists knew what they had to do, they had Dr. Goddard's experiments to go on, but we then had the problem of assembling young men who could become astronauts. We, naturally, turned to the flying services of the Air Force and the Navy, and these men came to study at the established base, which was Cape Canaveral in Florida from which the launchings took place.

These were remarkable young men. They were very carefully selected. They went into the type of training that very few of us even in our younger days could have survived, leave alone survive and then do the job.

I might just say parenthetically at this point that Senator SCHMITT was, I believe, the only man who was not a pilot, who did not come out of the ranks of pilots. But I can say this to his credit, that he went to Williams Air Force Base near my home and there learned to fly jet aircraft without any previous experience or background and became a very proficient pilot.

I mention that because not many people know that.

Mr. President, the Senator from New Mexico has discussed the history and gone somewhat into what he sees in space.

I want to talk for a moment about what this means to America and, following up Senator SCHMITT's thoughts, what potential it has in its meaning to freedom and the creation of freedom around this world.

We have in space what we call the spinoffs. Many people have criticized the United States, the Congress, for having spent over $40 billion in the efforts in space. But already, Mr. President, the spinoffs, the developments from the inventions that were needed to make space exploration possible, spinoffs numbering in the tens of thousands, have returned this money to our Treasury.

I make this prediction, that within 5 years, with the operation of the Shuttle, the $40 billion will be returned every year and will continue to grow as we learn to apply more and more what the science of space has taught us.

I see particularly the payoffs in energy. I think I will live to see the day when petroleum will be used only to make medicine, and we will have solved the problem of the atom to the point that some place in the Capitol will be a black box, perhaps 8 to 10 inches square, out of which will come all the electricity this building will use forever. This also will apply to our homes, although the black box might be 2 or 3 cubic inches in size.

I think we will see whatever means of transportation we are using in 20 years propelled by fuel other than gasoline—some exotic fuel that today NASA is exploring.

With respect to the advent of the Space Shuttle, we already have more than 8,000 applications for the use of this Shuttle. When we complete other equipment, we expect to see perhaps a shuttle trip a week, continuing on and on and on, to satellites in stationary orbit, containing men and workshops, where we can do things that cannot be done on Earth.

I often have talked about one little thing that can be done in such a shop. We are limited on Earth in the manufacturing of crystals. You say, What is important about a crystal? Well, a crystal runs our radios; it controls our frequencies; it controls anything that depends on frequency. It also can change

alternating current to direct current and do it in reverse. But a crystal this size, about 14 centimeters in length, cannot be manufactured on Earth because of a gravitational force which would cause impurities in the crystal. These crystals can be manufactured in space.

You say, What good are they? These crystals, used in connection with a stationary satellite some 22,000 miles over any city in the world, placed there to collect the rays of the Sun, could change those rays into radio waves. Transmitted to the Earth and then changed into electricity, these crystals could change it from direct to alternating current, or in reverse. In fact, even today, if we had these crystals, it would be possible, with the existing electricity that New York City uses, to use crystals; and with a new technique of transmitting electricity at far below zero underground the present electricity would be more than New York ever could use.

We will find developments in medicine. We do not know what weightlessness will do for the human body. We will find out within a few years, and great advances will be made in medicine.

So, Mr. President, on this 20th anniversary of sputnik, it is not just the fact that we have orbited the Earth, that we have put men on the Moon, that we have put equipment on Mars that has enabled us to tell what Mars is like, that we are on our way to the outer reaches of what we know of space. Those are very important things. But the important thing to me is that this has given science, in this country and in the world, a great shot in the arm.

I sometimes wonder if history has not proved to us that man can go only so far with doing the things we have always done. Our governments do not seem to change much. Our society does not seem to change much. Our relation to each other does not seem to change much. There comes a time when freedom disappears because of the weakness of men. I think the future of freedom and the future of our country rest more in the continuation of the explorations of science, in the encouragement of young people to get into the fields of science. I believe that we can depend on the continuation of freedom if we will learn to learn more and to apply the learning, such as we are doing today, from what we have learned in space.

As a taxpayer, I do not begrudge one dime we have spent in space, because it is going to make my life better. It is going to make the lives of my children and my grandchildren and my great-grandchildren—and on ad infinitum—better. That is what we always should be striving for—the betterment of freedom and the betterment of life on Earth.

So I salute NASA today. I salute the genius of Dr. Goddard. I salute the farsightedness of President John Kennedy. I salute those men who made it possible to build the devices which have gone into space. I salute, probably as much as any of them, those men who have guided those devices into space and back to Earth.

The PRESIDENT pro tempore. Under the previous order, the Senator from Maryland (Mr. MATHIAS) is recognized for not to exceed 15 minutes.

Mr. MATHIAS. Mr. President, I associate myself with the remarks that have just been made by the distinguished Senator from New Mexico and the distinguished Senator from Arizona. They have spoken eloquently and accurately about the impact of this new space science on the world, a science whose birth is generally recognized, I think, from the time Sputnik climbed into the upper reaches of space around this planet.

As they have said, there have been heroes in this new field of space science; and it should be noted here that they, themselves, are two of the heroes of space science.

Senator SCHMITT, as an astronaut, as one of the men who actually has gone into space, who knows it not as an academic science but as a field of personal adventure and exploration, is one of the men whose names will be recorded as the pioneers of space science.

Senator GOLDWATER, who has been the ranking Republican member of the Space Committee, who has had a lifetime of dedication to advances not only in this field of science but also in science in general, has contributed by his strong support, his unwavering support, and by his deep personal interest which transcends simply his professional responsibilities in the Senate. This is obvious from the way in which he has educated himself in many of the fields of science.

So when they speak about the space age and space science, they are speaking about a subject with which they are intimately familiar and about which they know a great deal.

Of course, I am not only proud of them, I also am proud of the many thousands of Marylanders who have made a particular contribution to the space age through their work at the Goddard Space Flight Center. That has been one of the pioneer organizations which has helped to plan the strategy and to execute the tactics which have brought the United States into the forefront of space science.

I think we owe a great debt of gratitude to all of the people at NASA over the years, those who are there now and those who have gone before them, for what they have done for the United States. They have brought us from a position in which we were not first into a position where we are not only first but way ahead of all the world in this remarkable science.

Of course, the first steps in this direction were laid by a very far-seeing President of the United States, President Dwight D. Eisenhower, in whose administration the space age began with the launching of Sputnik.

But I wonder, in a philosophical way, what it is that these people who have worked at NASA over the years have given to their country. Well, they have given us some magnificent spectacles. Anyone who remembers that moment when man first reached the Moon has to thrill a little bit with the sense of participation in this tremendous spectacle which mankind, not only in the United States but all over the globe, gloried in. It was a great step for mankind, and the people at NASA gave us that spectacle.

Then, as the Senator from Arizona has suggested, they have given us lots of very practical things. They have given us the spinoff, things which are used in medicine today, practical, everyday, medicine; the healing arts have been advanced by the work of the people at NASA.

A commonplace but important thing like the transmission of electricity over long distances will be improved, I believe, by the work that has been done at NASA, something which could reduce the electric bills for the average household by 25, 30, 40 percent, because of what NASA has done.

So the spinoff at NASA has given us a lot of practical results whose economic benefits are becoming embedded in our society, and they are probably so varied and so widespread today that they would be hard to compute.

But I would suggest, Mr. President, that the people at NASA have given to the United States something more important than the spectacle, something more important than these practical benefits. They have given to this Nation the right to be confident about the 21st century. They have given us the right to say that we can find solutions to problems; that we can find new techniques, that we can find new frontiers, that we can be pioneers, that we can look to the 21st century with confidence.

I believe that.

I believe we can be confident about the 21st century. I think this Nation, with its knowledge, with its skill, with its remaining resources can find answers to even the tremendous problems that plague the world and plague us as a nation for the years immediately ahead. There is no more convincing evidence of this than the work of the people at NASA.

So I say, Mr. President, that of all the great contributions that the men and women of NASA have given to us no gift is greater than the sense of confidence that we, as a nation, can still surmount our problems, and face the future with a calm assurance that we still have the capacity to meet all the demands and all the challenges that may be laid upon us, and I express my deep appreciation to them.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. MATHIAS. I would be happy to yield.

Mr. SCHMITT. The Senator's remarks are extremely profound. I could not agree with him more. I think he is absolutely correct that we can face the next decades and the next century with extreme confidence.

I would only add slightly to that, and as a point only in confirmation, that during the period of time of the 1960's when this Nation's greatness was tested and verified by our activities in space we were undergoing as a nation tremendous other internal stresses, psychological as well as practical, with the war in Vietnam, the student unrest, and the other

problems our society was faced with at the time. But still for most evenings, on the evening news, television or radio, there was something having to do with the very positive course this Nation had chartered for itself. That course was in space.

I know we will never quantify the effect of that positive psychological influence on this country, but I happen to believe it helped us, if not insured, that we would survive those times, that we would see a brighter future not only for ourselves but for the rest of the world; and what the Senator says about the confidence we can have in the next century is not misplaced.

One aspect of that confidence, I think, comes from one of the first major applications of space technology, and that is in communications. Through the positive and, I believe, generally altruistic motives of this country we encouraged and have established global communications satellite systems, and the Goddard Space Center has played the commanding role in that activity, and still does today.

I think the Senator is to be complimented on his support of that center's activities, and of this Nation's activities in insuring that at the very least the world can communicate with each other and, in so communicating, hopefully, will find answers to the problems we face today and will face in the future.

I compliment the Senator on his remarks and also the Senator from Arizona for his, and I thank both of you for your kind remarks.

Mr. GOLDWATER. Mr. President, if the Senator will yield, talking about communications, it is my pleasure once in a great while to talk through our amateur radio satellite, which we call OSCAR, to different parts of the world. This goes on daily right around the clock. At one time I recall with great pleasure having a debate with a secretary of state counterpart in England and France, and I was sitting in New York, and I was trying to watch the monitor, as we always do. But the distance the signal had to travel was enough time so that there was a lip lag, and I had to quit looking at the monitor.

But the Senator is so correct. We are even doing it now on the desert of Arizona where we are using satellite television transmission to take care, in a testing way, of the Papago Indians, and we are doing it on the Navaho reservation.

So I agree with what both of you gentlemen have said about the future of this country.

While I do not think the future of this country can depend on mere man, I think it can depend on science. Thank you very much.

Mr. MATHIAS. Mr. President, I yield the floor.

ORDER OF BUSINESS

The PRESIDENT pro tempore. The Senator from Nebraska is recognized for 15 minutes.

RESOLUTION CONCERNING A NATIONAL WATER RESOURCES POLICY

Mr. CURTIS. Mr. President, I am about to send to the desk for consideration a resolution concerning a national water resources policy, and later on will make a request for its immediate consideration.

This resolution, which is unprinted, has 35 cosponsors. Most of my colleagues should have had the opportunity to familiarize themselves with this proposal, and I hope we can have immediate consideration.

On September 22, seven colleagues and I sent a letter to all Senators which discussed the proposal. The cosponsors also have copies of the resolution as well as copies of resolutions and policies which I will discuss here briefly.

Mr. President, the resolution I am proposing today expresses the sense of the Senate with regard to establishment of a national water resources management policy.

My colleagues all should be familiar with the current activities and efforts by the administration to study and establish a new national water resources policy. The administration is proceeding with a study for a new policy under the authority delegated to it by the Congress in the 1965 Water Resources Planning Act, Public Law 89–80.

However, there has been considerable concern expressed by the States and the public because of the short time afforded them for input and comment on the administration's proposals to date. Indeed, from the first announcement of regional hearings to be held on the proposals the States and public had just 1 month in which to prepare comments and recommendations.

On June 28 the Water Resources Council announced that regional hearings would be held around the Nation on July 28–29, and August 1–2. But, it was not until July 15 that the administration's issues and options papers, which were to be the subject of those hearings, were first printed in the Federal Register. Thus, the States and the public had less than 2 weeks in which to prepare comprehensive responses.

Because of the many complaints about the short time for comment and input, the administration did extend the period for public comment; first from August 12 to August 20, then to September 15, and finally to November 20. The new timetable of the administration calls for final recommendations on a new national water policy by the President in February of next year. But, in spite of the recent extensions of time for the public to comment on the proposals, the administration has not seen fit to grant further opportunity for input, comment, and recommendations by the States on the final proposals.

Mr. President, I repeat that the administration does now have the authority to develop national policy in this area. We, the Congress, gave such power to the administration in the 1965 act.

However, because of the outcry of the States, and because of the importance of this matter to every State, and because it appears that the States are not being provided the opportunity to have real input, and because the administration appears to be going beyond the intent of Congress in the 1965 act, and because the ultimate responsibility for national policy rests with Congress under the Constitution, I believe Congress should act positively to bring this matter back before it.

The concern of the States is very real. Those of my colleagues whose States have experienced severe drought in the past 3 years are aware of the serious concern about water resources. For those who have been fortunate in having their States escape the drought I can only say that water resources are important for the entire Nation.

This is not a regional issue of the West or the South or of any other area. Drought has hit the West, the Midwest, the South, and some of the Atlantic Coast States. Furthermore, drought is not the only concern of water resources as it affects agriculture. Water is also of major concern for domestic consumption, for commercial and industrial uses, and for environmental, recreational and other purposes.

In the material distributed to the cosponsors today are resolutions and policy statements which oppose the current proposals and procedures of the administration to establish a national water resources policy. These documents were all adopted unanimously. On September 9 the National Governors' Association, representing all of the 50 States, adopted such a resolution. On September 2 the Western Governors' Conference adopted a policy statement, and on August 31 the Interstate Conference on Water Problems representing all of the States unanimously adopted such a policy.

Mr. President, the resolution we are introducing today does not pit environment against development. It does not address any single water resource project or development. It is not concerned with the merits or demerits of water resources developments, programs or projects.

But it is concerned with States' rights, and with historical precedence, and with public and State concerns, and with the authority and responsibility of the legislative branch of Government in the area of national policy.

While recognizing the authority of the administration to set water policy in accord with the Water Resources Planning Act of 1965, our resolution also recognizes the constitutionally based responsibility for national policy with Congress.

The resolution itself does not preempt or preclude any new national policy guidelines by the administration, but seeks to insure proper input and consideration for the States, as well as opportunity by Congress to review proposals before they are implemented with the impact and effect of law. As my colleagues know, once a law is passed or a regulation is put into effect it is very

difficult to change it. So, this resolution today will serve to insure against the need for later change by providing for full airing and input and consideration of new policy proposals by the States and the Congress and not just the administration.

Simply put, Mr. President, our resolution would establish a 6-month moratorium on implementation of any new national policy recommendations during which Congress is in session and from the time of publication of those final recommendations. It would also express the sense of the Senate that the States should be provided with copies of the proposals and the materials on which they are based, and that the States should then have 2 months in which to respond and make input and recommendations to the administration and the appropriate committees of Congress.

After that the States would have 1 more month in which to meet within regional and river basin commissions to make recomendations which would also go to Congress and to the administration. Finally, Congress would have 3 months in which to hold hearings on the matter.

I point out at this time that among the 34 cosponsors of my resolution we have majorities of both the Environment and Public Works and the Energy and Natural Resources Committees.

Mr. President, this should not be a controversial matter. It is simply a sense of the Senate resolution regarding the current activities and procedures of the Federal Government concerning national water policy. It recognizes the concerns and sentiments of the States as expressed in the resolutions adopted in opposition to the current efforts by the Federal Government. It insures the rights of the States and of the citizens to have input in matters of Federal legislation and regulation.

I have additional remarks which I shall make for the record. First, I will send a resolution to the desk, and I urge its swift approval by the Senate.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield for a question?

Mr. CURTIS. I am happy to yield to the distinguished leader.

Mr. ROBERT C. BYRD. Did I understand the distinguished Senator from Nebraska to indicate he was going to call up this resolution for immediate consideration?

Mr. CURTIS. Yes. That is my intention.

Mr. ROBERT C. BYRD. May I ask the distinguished Senator as to whether or not the chairmen of the committees involved have given their approval for the immediate consideration of this resolution?

Mr. CURTIS. I am happy to respond that the chairmen of both committees which would have jurisdiction of this matter have approved the immediate consideration and agreeing to of this resolution.

Senator JACKSON, who is chairman of the one committee, is a very great authority on water in his own right, and he is a cosponsor as well as most of his committee, and he has sent us a note authorizing the immediate consideration of the resolution at this time and agreeing to the resolution.

The other committee involved is headed by the distinguished Senator from West Virginia, Mr. JENNINGS RANDOLPH. He, too, has authorized us to go ahead and proceed with the resolution and agree to it at this time.

It is a sense of the Senate resolution and as I say it is not pro or con anyone's project, but it is to help work out an orderly timetable with little delay in developing a policy, and I think that it will serve all parties very well in that regard.

Mr. ROBERT C. BYRD. I have one further question. Does the distinguished Senator from Nebraska know of any opposition to the resolution on either side of the aisle?

Mr. CURTIS. No, I do not. It is something the Governors are interested in as well as the various interstate groups that consider these matters. It has been widely discussed by individual Senators on the State level.

The letter signed asking for cosponsors carried a list of seven bipartisan names, so it is something that has ample consideration and there is no opposition.

Mr. ROBERT C. BYRD. I do have one further question that just occurs to me. The Senator has no intention of offering any amendment to the resolution as it is now written?

Mr. CURTIS. No, not at all.

Mr. ROBERT C. BYRD. Very well.

I apologize to the distinguished Senator for interrupting him.

I have no objection to the introduction and immediate consideration of the resolution.

Mr. CURTIS. I thank the distinguished majority leader very much, and he need not apologize for interrupting me. I am always glad to be interrupted with good news, and I thank him for the good news.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. CURTIS. Mr. President, at this time I wish to read into the RECORD the names of the cosponsors.

I have introduced this resolution for myself, Mr. JACKSON, Mr. HASKELL, Mr. LAXALT, Mr. GARN, Mr. GRAVEL, Mr. MCCLURE, Mr. HART, Mr. WALLOP, Mr. MCGOVERN, Mr. HANSEN, Mr. YOUNG, Mr. EASTLAND, Mr. TOWER, Mr. DOMENICI, Mr. HAYAKAWA, Mr. CHURCH, Mr. HATFIELD, Mr. STEVENS, Mr. GOLDWATER, Mr. DECONCINI, Mr. METCALF, Mr. CANNON, Mr. SCHMITT, Mr. BURDICK, Mr. HATCH, Mr. BARTLETT, Mr. HUDDLESTON, Mr. DOLE, Mr. PEARSON, Mr. FORD, Mr. THURMOND, Mr. BENTSEN, Mr. MELCHER, Mr. MOYNIHAN, and Mr. HELMS.

ESTABLISHMENT OF A NATIONAL WATER RESOURCES MANAGEMENT POLICY

Mr. CURTIS. Mr. President, I send the resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SASSER). The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 284) to express the sense of the Senate wiht regard to establishment of a National Water Resources Management Policy.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. CURTIS. Mr. President, at this time I call the attention of my colleagues to the situation regarding administration efforts to establish a new national water resources policy.

I have a resolution prepared on this subject, and though it has not been printed, copies of the resolution have been distributed to each Senator's desk along with other materials which provide background information on this matter. Several other Senators have joined me in cosponsoring this resolution, which I will discuss in a short while.

Mr. President, I am bringing this matter before the Senate at this time because of the serious concerns I have heard expressed around the country regarding future water supplies and the current Federal procedures for establishment of a national water resources policy.

I need not remind my colleagues from the Western States and those others that have experienced drought problems in the past 3 years of the concern over water resources. But, for the benefit of those Senators who have been fortunate in having their States escape the drought, it is important that we all be reminded of the seriousness of the situation and of the importance of water generally. I believe that the issue of future water sufficiency for our Nation may be the most important domestic concern we will have to face, overshadowing even the energy shortage of this decade.

Mr. President, I am not here to argue the merits or faults of particular water resources projects, or to debate the tradeoff between water resources development and environmental concerns. My purpose is not to engage in argument over the specifics of water resources projects or of environmental protection programs. Rather, it is to call the attention of the U.S. Senate the basic problems concerning water resources policy generally, and to provide for affirmative action by Congress in this area.

While sides have developed over issues of specific water resources developments, and over Government positions and philosophies concerning water resources generally, there is no disagreement that I know of concerning a need for some new direction in water resources policy. The disagreement that does seem to persist within this understanding concerns priorities and levels of Federal control and authority. For that reason, I believe it is important that Congress take an active role in any Federal proposals and plans for a national water resources policy.

NATIONAL WATER POLICY

As my colleagues know, the administration is now in the process of developing a new national water resources policy. In this effort the administration is proceeding under the authority delegated to it for policy implementation under

the 1965 Water Resources Planning Act, Public Law 89–80.

However, in its efforts to date the administration has made some proposals and preliminary recommendations which appear to be far beyond the scope of policy authority intended by the Congress in the 1965 act. In the course of regional hearings and various meetings on these proposals, severe concern and opposition have been voiced by most of the States.

Thus, I feel it imperative that the Congress reinsert itself into the policy area of water resources and take up its responsibility in this area as provided under the Constitution. The action I am proposing here directly is to protect the States and to assure their autonomy in this area of natural resources.

To understand why the problem and controversy has come about in this matter we should review the developments by the administration to date.

On May 23 the President delivered an environmental message to the Congress in which he said that there would be a study made by the administration to develop a national water resources management policy. While not setting a date or time for the study, the President said that it would be directed by Interior Secretary Cecil Andrus as Chairman of the Water Resources Council, and that the study would be conducted by and coordinated among the Water Resources Council, the Office of Management and Budget, and the Council on Environmental Quality.

On June 28 the first public notice of such a study was made when the Water Resources Council distributed a press release announcing that eight regional hearings would be held around the Nation to solicit public comment and input. The press release announced that hearings would be held in some of the regions on July 28 and 29, and in others on August 1 and 2.

On July 6 the first published notice of the hearings appeared in the Federal Register, and it was not until July 15 that the Federal Register carried the issue and option papers on which the hearings were to be held.

From the published notices and information by the administration to date, it is clear that the administration intended the regional hearings to be the opportunity for the States and the public to comment.

I point out that the time for the States and public to prepare for the hearings was just 1 month from the first announcement of hearings by the Water Resources Council, and that it was less than 2 weeks from the publication of the issue and option papers. It is interesting that the administration gave the Federal agencies 6 months in which to develop a water resources management policy, but that it gave the States and public less than 1 month in which to comment and respond. I doubt that any of the States had the resources or capability for developing any comprehensive recommendations in such short time.

It later developed that there was some confusion about how long the administration would keep the record open for comment in this matter. The June 28 press release of the Water Resources Council said the record would be open until noon on August 9. The Federal Register of July 15 said the record would remain open for comments until August 20, and another press release of July 20 from the Water Resources Council said the record would remain open until the close of business on August 12.

If the discrepancies in these announcements are puzzling to my colleagues, think how they must have been regarded by the States and the public.

While regional hearings were being held around the Nation on the administration's proposals, I wrote Interior Secretary Andrus to protest the short amount of time the States and public had in which to comment, to urge extension of that time, and to request a followup opportunity for the States to comment on finalized recommendations once those were prepared by the administration. I am aware that many of my colleagues also wrote the administration on this matter, and most of the States also requested further hearings.

The result was that we had two further extensions of time. On August 19 the Water Resources Council published in the Federal Register a notice of extension of the time for public comment to September 15. Finally, on September 1 a Federal Register announcement extended the comment period to November 20, and set the deadline for recommendations by the President for February of next year.

STATES' CONCERNS

Mr. President, since the announcement of a national water policy study by the administration, and its activities in that area, there have been many concerns expressed by the States—Governors, legislatures, and water resources directors—individually and in meetings around the country.

In May of this year the Second National Conference on Water, sponsored by the Federal Government, was held in St. Louis. Some 500 State and local officials and private citizens representing various interests attended that conference. The results and conclusions of that conference were delivered to the President.

It is interesting to note that the findings and conclusions of that conference were the same as those expressed later by the Interstate Conference on Water Problems, by the National Governors' Association, by the Western Governors' Conference, and by various regional river basin and water resources organizations.

Principal among the conclusions voiced by these groups and individuals were that:

First, while there is a need to streamline, refine, and improve upon the present Federal structure and procedures involving water resources, there is no feeling of a need to change completely the existing institutional structure;

Second, there is a need to centralize water resources policy in a single Federal agency which is independent of all other Federal agencies, biases and influences; and

Third, there is a need to strengthen the roles, responsibility and authority of the States in water resources planning and policy, and to retain the autonomy of the States in the complex issues of water resources.

OPPOSITION

Mr. President, the administration received thousands of pages of testimony, statements and comments during the regional hearings which were held around the Nation in late July and early August In addition comments continue to pour into the Water Resources Council from the States and the public.

My colleagues may be interested to know that as of last week I was advised that the record of those hearings had not yet been transcribed, although the administration itself appears to be proceeding with development of its policy.

The Interstate Conference on Water Problems, which is an official organization sponsored by the 50 States concerned with water resources, attended and monitored those regional meetings. The ICWP on August 12 published a briefing paper on the hearings. The paper included general comments from the eight regional hearings and the Washington, D.C. hearing, and also had specific random comments of Governors and other officials of several States including Idaho, Wyoming, North Carolina, South Carolina, Ohio, Texas, Massachusetts, Arizona, California, and Georgia.

The statements and comments of all those officials reflected concern about the ongoing Federal procedures and administration efforts concerning a national water resources policy. Most of the State officials requested a time extension for further comment, and most also insisted that there be an opportunity for further State input.

At this point I cite in part the August 12 report by the Interstate Conference on Water Problems which summarized the administration's regional hearings:

> Many of the States and other hearings participants were unable to develop detailed comments in reaction to the issues and option papers for the July 28 and 29 and August 1 and 2 hearings. In fact, some States had not even received the second issue of papers published in the July 25 *Federal Register* before the hearing in their region. There was also an attitude by some States that the options and problems, as presented, were less than adequate statements of the situation as it relates to water resource management, with some misleading and erroneous descriptions and inferences.
>
> In addition to the simple lack of time available to develop input, the States also expressed concern over the procedures used to develop the issue/option papers. States indicated their willingness to assist and complained that their expertise was untapped because the study procedure did not allow for non-Federal input in formulating viable options. Some States thought that the involvement of existing regional entities, such as River Basin Commissions, should have been more involved in formulating the National Water Policy Option Papers.
>
> Nevertheless, there was some agreement that the Administration's overview of existing National Water Policy was welcome and that some measure of reform was to be expected.

The States were in common agreement in their testimony that the Administration's comprehensive review of water policy should differentiate sharply between a "National" water policy and "Federal" water policy. Issue papers should have been directed more at defining a National Water Policy, its goals and objectives, rather than focusing on administrative changes and procedural revisions.

States inferred from the option papers, and from the process that was used to develop the option papers, that there is an underlying Federal policy emerging. That policy is thought to be increased Federal guidance, regulation and direction, with a concurrent reduction in Federal funds to support state management programs and state and Federal projects.

Additionally, states inferred from the option papers a Federal attitude that does not recognize the capabilities of the States. Specifically, States believe that the Federal option papers reflect an attitude as follows:

1. That the States have not in the past effectively or appropriately managed their resources.

2. That the States are not now effectively or appropriately managing their resources.

3. That the States cannot (and/or will not) effectively and appropriately manage their resources without a massive infusion of Federal regulation, direction and guidance.

The States generally found the above inferences to be contradictory to their experiences, since all major Federal resource programs in recent years have been modeled after programs which were originally conceived and implemented in one or more States. States suggested that to deny their innovative and initiating role was to deny the history of the existing Federal programs.

Invariably, the States were aggressive in defining existing State prerogatives and responsibilities and stated that they be respected and maintained in the development of recommendations to the President. It was emphasized that water resource management is the proper responsibility of State governments. Many States are of the opinion that they are better prepared than the Federal agencies to solve problems which are unique or peculiar to the States. The proper role for the Federal agencies was viewed as support of State water management activities, whether in the development, management or use of the resource, through provision of financial and technical assistance and programmatic support. Also, through a more effective coordination of Federal agency efforts in conjunction with State water plans and activities, State management needs can be more adequately attended to. States indicated that Federal programs should not be competitive with State and other non-Federal programs.

Mr. President, among the materials I have distributed with this resolution are copies of resolutions and policy statements expressing opposition to the current administration efforts and activities toward development of a new national water resources policy. These resolutions and statements were all adopted unanimously, and include positions taken by the National Governors' Association, by the Western Governors' Conference, and by the Interstate Conference on Water Problems.

In summary, all positions make strong cases for continued State autonomy in water resources matters, policy and law; they take issue with the proposals made to date by the administration; and they protest the methods of the administration in pursuing its study to date, particularly with regard to the short amount of time for the States and public to prepare comments for the hearings and to respond to administration proposals.

CONGRESSIONAL ACTION

Mr. President, with all of the controversy now in this matter, and with the unanimous outcry from the States, it is clear that the time has come for the Congress to intervene and to reassert itself in the area of water policy.

The Committee on Environment and Public Works is aware of the seriousness of the situation and already this year has held several days of hearings around the Nation on a national water policy.

At the first day of hearings on March 31, the Subcommittee on Water Resources heard from the Acting Chairman of the Water Resources Council, Mr. Christopher Farrand. In his statement on past administration activities regarding national water policy, Mr. Farrand said "there has been an unwillingness or inability to work with the Congress during the development of recommendations". He went on to say that there "has been lack of full involvement of the States, and frankly, the attention of the Congress has not always focused on water policy development".

If we are to believe all of the statements emanating from the administration these days, it is clear that there is a recognized need for greater coordination by the Federal Government with the States. But, whether or not such a belief or feeling has converted into action is questionable.

As recently as September 9 of this year, in a statement on reform of the Federal grants-in-aid system, the President said there would be greater coordination by the Federal Government with States and local governments in the development of regulations at the earliest stage. I quote from the President's September 9 statement:

Early in my administration, I directed the heads of all executive departments and agencies to consult with State and local officials when Federal regulations, budgets, and policy and reorganizations proposals were first being formulated. This procedure, a sensible and long-overdue reform, is now becoming routine. I further directed each agency head to make specific senior officials responsible, full-time, for consulting with States and local leaders and for insuring that their views are reflected in the development of departmental policy. These senior officials are now on the job.

In mid-October, I plan to issue an Executive Order which will require agencies to take positive steps to improve the process by which regulations are developed and issued. This will include soliciting public advice, including that of affected State and local governments, early in the process of developing regulations. It will also call for the publication of a semi-annual schedule of significant regulations on which they plan to begin work.

Now, Mr. President, I am sure my colleagues share my endorsement of such a policy by the administration. We hear constantly from the States about problems they have with Federal agencies in the implementation of regulations, so it is welcome news that the administration will be seeking greater coordination with the States and input from them.

The President's statement, and those of other administration officials in recent months, do give me cause to wonder though, in the case of the current activities for establishment of a new water resources policy.

I have already pointed out that one of the major objections to this activity from the States has been the short notice given for comments after publication of the administration's initial proposals, and the lack of any real administration effort to have State input in the proposals themselves. To my knowledge there was no consultation by the administration with any of the States for their input. The President in his September 9 statement clearly says that he directed his agency heads to consult with State officials when policy proposals were first being formulated.

That being the case, I wonder why the administration had not consulted with the States before development of the policy proposals for a national water policy.

I would be interested to know, as I am sure all of my colleagues would, just who the full-time senior official is in the administration for consulting with the States on water policy. All of the statements made by the various States at the National Governors' Association Conference, at the Western Governors' Conference meeting, and at the annual meeting of the Interstate Conference on Water Problems indicated that the States had not had advance notice or consultation from the administration on its proposals for a new national water resources policy.

What we have here, Mr. President, appears to be a clear issue of a double standard. The administration is saying one thing but doing another. I seriously doubt the intentions of the administration to get State input where it has proceeded as it has on a national water resources policy.

If these words seem too strong for some of my colleagues, I would just point out one other action taken by this administration which speaks for itself. For the past several years the Interstate Conference on Water Problems has served as an official representative organization of the States to the Water Resources Council. The ICWP has been a voice of the States in Federal water policy. But this year the administration eliminated the ICWP in this role. We now have no voice of the States at the Federal level in water resources policy. Again I point out the President's statements, and ask where the States are being consulted or have the opportunity for input.

NEEDED INPUT

Mr. President, the fact is that the administration has not consulted with the States in the development of a new national water resources policy. If there had been any consultation the States would not have known about it. If there had been any consultation the States would have known about it. If there administration's activities. If there had been any consultation the views of the States would have been reflected in the

proposals, as the President himself has said such views should be included in Federal proposals.

It should be clear to all that in the case of the administration's proposals for a new national water resources policy, we have the Federal Government working to establish a national policy and regulations from the bureaucracy in Washington without regard to the States, localities, and regions of the country.

What we should have, Mr. President, is the administration pursuing a national policy based on the policies and positions of the States. Only in that way can a national policy for such a complex subject as water truly reflect the needs and peculiarities of the various States and regions of the country. That brings us to the resolution we have before us today and which I am introducing for myself and several of my colleagues.

SENATE RESOLUTION

Mr. President, my resolution would express the sense of the Senate regarding the current study and timetable by the administration for establishment of a new national water resources management policy.

The introductory part is self-explanatory. It gives the historical developments as a basis and need for the resolution. I would just point out that the introductory part begins with recognition of the authority of the executive branch for development of national water policy according to the 1965 Water Resources Planning Act; and it concludes with a statement of the vesting of responsibility for such national policy under the Constitution in the Congress.

The main body of the resolution carries two provisions, one regarding a moratorium on implementation of any new national water policy, and the other establishing a timetable for action on a national water policy.

Basically the resolution states that it is the sense of the Senate that no new national water resources management policy shall be implemented without congressional concurrence, and no proposed regulations for such a policy shall take effect for a period of 6 calendar months during which Congress is in session, from the time of publication of any proposed regulations in the Federal Register and notification by the administration of such proposals to Congress.

The resolution also provides that upon completion of any final proposals by the administration, the administration should transmit those proposals along with other documents and related information, to the States. The States would then be given 2 months in which to develop their responses to the administration proposals, and to develop their own recommendations. Those responses and recommendations would then be sent by the States to the Water Resources Council and to the appropriate congressional committees.

After the 2 months period alloted for the States to comment, there would be an additional 1 month period for the States to meet within river basin or regional commissions for recommendations of regional policies. The regional recommendations would also be sent to the Water Resources Council and to the congressional committees.

Finally, Congress would have 3 months in which to conduct hearings and develop any recommendations, policies, or legislative proposals.

Mr. President, the significance of this resolution is that it puts the administration on notice of the intent of the Congress and of the concern we hear expressed about the administration's activities to date in the development of a new national water resources policy. It is also significant because it represents the first official step by Congress to regain some of the policy authority from the administration which Congress delegated in the 1965 Act.

Beyond that this resolution shows the awareness by the Senate of the concerns expressed by the States, and it shows the firm intention of the Senate to do something positive. The resolution would provide the very input opportunity for the States which the administration has not provided in matters of national water policy, and the resolution puts the States on notice that if they want to have input they must respond accordingly.

Finally, the resolution states the intent of the Congress to act on the responses to the administration's proposals by conducting hearings toward development of any national policy.

Mr. President, if nothing else has been provided by the drought of the past 3 years it has at least been shown that water is our most precious resource. If nothing else has been learned about the procedures of the administration to date on a national water policy it has at least been shown that the States share a deep and serious concern about water resources and the rights of the States concerning policies regarding these resources.

I believe the States' rights should be considered in the development of any new national water resources policy; and that if they are to be considered it will be only as a result of congressional action. This resolution sets the stage for a thorough airing of the controversy over a national water resources policy, and I believe Congress has a responsibility to reassert its authority in this area.

Mr. HANSEN. Mr. President, it is with pleasure that I join with my very good friend, the senior Senator from Nebraska, in cosponsoring a resolution to assure a full hearing and input by the States and Congress before any national water resource policy is effected.

Ever since gold was panned in California, the concept of prior appropriations has been the system upon which the West has relied in the utilization and development of its water. Based upon this system and the State water laws developed around it, farms and ranches were created from the frontier. Based upon this system, industry developed. Based upon this system, cities and towns grew up. For over 100 years the arid West has relied upon this system and developed in accordance with it and grown strong and economically prosperous because of it.

Of the positions advocated and advanced in the issue papers promulgated by the Water Resource Council, the one of most concern to me is the one which appears to advocate a Federal takeover or at least the imposition of a heavy Federal hand to alter the system of prior appropriations as it exists in the West.

Despite the success which we as a State and as a region have enjoyed with our system of water law, and despite the constant improvements which we have made to that system, the WRC finds our system somehow deficient, somehow lacking, filled with, in the words of issue paper No. 3, "inflexibility, inefficiencies and inequities."

Mr. President, it is not necessary at this time to engage in a point by point refutation of the rather general imprecise and inaccurate conclusions drawn in the issue papers concerning the state of Western water law. Suffice it to say that, Wyoming water law does take cognizance of the relationship between ground and surface water, does allow for an expanded definition of beneficial use in order to meet public policy, does prohibit waste, does encourage conservation in the marketplace, does permit transfer of water rights and does provide for instream flow needs.

It is my belief that the concern of the WRC is less with the adequacy of State water laws than with the likelihood or ability of various States to achieve the objectives considered desirable by those in the administration. Thus I welcome the ability to cosponsor a resolution which will attempt to insure the full participation of Congress in ariving at a national water policy.

Mr. DOMENICI. Mr. President, I wish to state my support for Senate Resolution 284.

As the ranking Republican member of the Subcommittee on Water Resources, I believe that the consideration of a coordinated water policy must be a major undertaking of this Congress and the administration.

Such a national policy will only be effective when it is developed with effective and meaningful consultation by the States and in coordination with the Congress. Such a cooperative attitude is what this resolution seeks to encourage. I support that goal wholeheartedly, and I am proud to be a cosponsor.

I wish to commend our colleague from Nebraska (Mr. CURTIS) for his most effective leadership on this issue.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 284) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

Whereas the 1965 Water Resources Planning Act authorizes and delegates to the Executive Branch the establishment of certain Federal water resources policies;

Whereas the Executive Branch has proposed establishment of a national water resources management policy;

Whereas procedures have been initiated toward establishment of such a policy;

Whereas the timetables set by the Executive Branch permit public comment only until November 20, 1977, on Executive Branch proposals, with final policy approval by February 28, 1978;

Whereas the States have expressed opposition to certain proposals and procedures of the Federal government in the policy study, and have expressed concern that States' needs and concerns have not been addressed or considered;

Whereas the Interstate Conference on Water Problems on August 31, 1977, unanimously adopted a water policy statement supporting the States' roles in water management policy and opposing the Federal proposals;

Whereas the Western Governors' Conference on September 2, 1977, unanimously adopted a policy statement asserting the rights of the States in management of water resources;

Whereas the National Governors' Association representing all of the 50 States on September 9, 1977, unanimously adopted a resolution opposing certain Federal policy proposals and supporting the roles of the States in water resources management;

Whereas most States have ongoing research, study and activities in water resources management which would be affected by or which would affect any national policy on water resources management;

Whereas management expertise in water resources now exists in most of the States and the authority and domain over most water resources in the United States has historically been vested in the individual States and is now so vested;

Whereas the proposals as published in the Federal Register to date show the intent of the Executive Branch to assume certain functions previously exercised by the States, and as such appear to be contrary to the intent of Congress as stated in the 1965 Act;

Whereas any national water policy must provide for differences in topography, geology, hydrology and other criteria concerning water resources in the various States and regions; and

Whereas the responsibility for and authority over Federal policy is clearly vested under the Constitution with the Legislative Branch: Now, therefore, be it

Resolved, That it is the sense of the Senate that no new national water resources management policy shall be implemented without Congressional concurrence, and no proposed regulations for such a policy shall take effect for a period of six calendar months, during which the Congress is in session, from the time of publication of proposed regulations in the Federal Register and of notification by the Executive Branch of such proposals to the Congress, provided further that—

(a) the Executive Branch shall cause to have all recommendations and proposals transmitted to the States, and shall make available transcripts, documents, and material collected and prepared at and as a result of regional hearings conducted on such proposals;

(b) the States shall be provided two months in which to develop their responses to the Executive Branch proposals, and to develop recommendations, which responses and recommendations should be transmitted to the Water Resources Council and the appropriate Congressional committees;

(c) the States shall be provided an additional month in which to meet within river basin or regional commissions for recommendations of regional water resources management policies which should be transmitted to the Water Resources Council and the appropriate Congressional committees; and

(d) the Congress shall have an additional three months in which to hold hearings on establishment of a national water resources management policy.

Mr. CURTIS. Mr. President, I wish to pay tribute to Mr. Jack Odgaard of my staff, who has worked long and hard and been in contact with the Governors, other officers, and many other people with regard to this resolution on national water policy, and I am very much indebted to him for his help.

Mr. President, I thank the Chair, and I yield the floor.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, has any time been yielded back by Senators under the orders previously entered?

The PRESIDING OFFICER. A number of Senators have not used all the time in their 15 minute orders.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that I may control the time that was not used by those Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum without prejudice to any Senator under the orders entered, and I ask unanimous consent that the time be charged to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BARTLETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, we will soon be confronted with a problem which demands a thorough investigation. That is the issue of the cargo preference legislation which the President has proposed. I believe, Mr. President, that the questions raised thus far about this legislation are sufficient to cause us to investigate it with all the intensity and vigor we can develop.

I therefore urge that the Commerce Committee schedule and hold such additional hearings as may be necessary to fully explore all aspects of the merits of the cargo preference legislation, as well as the means by which the decision of the administration to propose it was made.

As proposed by the President, "cargo preference" legislation would require that by 1982 at least 9.5 percent of our imported oil would have to be carried on American flag ships. Other legislation has been proposed in Congress which would require that as much as 20 percent or 30 percent of imported oil be carried on American ships.

At first blush, it does not seem altogether unreasonable for us to prefer American ships over those of other nations. But once you get past that first blush, the idea of a cargo preference requirement begins to look a whole lot less attractive.

To hear the proponents of cargo preference legislation tell it, the only significant effect which will result from this idea is more jobs for Americans in the maritime industries. Mr. President, the plain fact of the matter is that while there may be some increase in maritime jobs, the net result of this legislation is going to be a tremendous pain in the pocketbook for the American consumer.

The potentially staggering costs of this legislation are not merely figments of my imagination, Mr. President. Cost figures on this legislation have been amply documented by numerous agencies of government, including the General Accounting Office, the Federal Trade Commission, and others.

When the President first submitted his proposals to the Congress, the administration claimed that the price tag of the legislation would be about $110 million to consumers. Not long thereafter, the GAO and the Federal Trade Commission both came forward with studies that showed the actual cost would be closer to $240 million—more than double the administration estimates. Since that time, the GAO has come out with a new estimate showing the probable cost to be over $610 million—over five times the administration estimate.

The increased costs of energy to the consumer stem from the fact that American flag ships are significantly more expensive to build and to operate than are other vessels.

Examination of these cost figures clearly indicates that the American consumer is going to pay a tremendous price for the purpose of creating a few hundred jobs in the maritime industry. It has been estimated that the cost of each additional maritime job created as a result of this legislation would be a whopping $110,000. If creating maritime jobs is the objective, cargo preference legislation is obviously a terrible way to do it.

This is just another case of robbing Peter to pay Paul. The American consumer is getting robbed and the maritime business, with the willing support and cooperation of the administration, is doing the robbing.

In addition to the tremendous costs this legislation would shift to the American consumer, it is also likely to spark retaliatory, protectionist measures by other countries. Such a response by others would demonstrate most dramatically the counterproductive nature of cargo preference legislation. It is not difficult to imagine circumstances under which the Soviet Union, for example, might require that all American wheat shipped to Russia be carried in Russian ships. Then where would the maritime interests be?

Mr. President, when these factors are considered, it is indeed difficult to understand why the administration would persist in its determination to recommend cargo preference legislation. The decision has been rendered even more questionable by the revelation which has recently come to light that the Departments of State, Defense, and Treasury, as well as the President's own Council of Economic Advisors and the Office of Management and Budget, argued against this legislation on one ground or another.

Mr. President, the evidence mounts that this decision by the administration is little more than a blatant political payoff. An estimated $200,000 was pumped into the Carter campaign by

the maritime unions and related interests.

Various internal memorandums suggest that the decision by the administration was merely for the purpose of paying the President's political debts to the maritime interests.

The American people are entitled to know the real reasons for an administration policy that would cost the consumer millions in unnecessary costs. And they are entitled to know the extent to which such policies are the result of an unholy alliance between the President and the maritime unions, both of which may be seeking this legislation for reasons that have absolutely nothing to do with the public interest.

It is therefore essential that the Senate, through the appropriate committees, fully explore every aspect of the cargo preference decision. That consideration should include indepth discussions with many, if not all, of the key administration officials who played a part in this decision. It is essential that we know whether cargo preference will stand on its own merits or if it is just a political deal with a special interest group.

If we find, as I expect we will, that cargo preference legislation will not stand on its own merits, then we should insist that the President repudiate any deal with the maritime interests and withdraw this legislation. Given the President's willingness to repudiate promises made to the American people, such as the one he made last year regarding the deregulation of natural gas, I should think he would be most willing to reconsider an ill-advised private deal made with a special interest group, if that is the case.

I realize that some of my colleagues may have more enthusiasm for investigating the sour odors of a milk fund scandal than they do for investigating the bubbling bilge of a maritime bailout. But our responsibilities as Senators require that we fully and forthrightly address the issues which have been raised about cargo preference legislation before we even consider enacting it into law.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent there be a period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 2114, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 2114) to authorize Federal action to encourage energy conservation, efficiency, and equitable rates in public utility systems, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Deborah Merrick, Marjorie Gordner, Mike Harvey, Dan Dreyfus, Ben Cooper, Jim Bruce, and Bob Szabo be accorded the privileges of the floor during consideration of S. 2114, the Public Utilities Regulatory Policy Act of 1977.

I also request unanimous consent that the following staff members be given floor privileges during the consideration of and voting on S. 2114:

Jack Odgaard, Fred Craft, Danny Boggs, Tom Imeson, Carol Sacchi, Faye Widenmann, Judy Foley, and Mary McKenna.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Erich Evered, of my staff, be granted the privileges of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Kathy Bruner, of Senator HAYAKAWA'S staff, have the privilege of the floor during the debate and votes on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Tom Graham, of Senator DURKIN'S staff, have the privilege of the floor during the debate on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator from Louisiana yield for a question?

Mr. JOHNSTON. I yield.

Mr. DOMENICI. Will the Chair tell the Senator from New Mexico what the unanimous-consent agreement is on this bill?

The PRESIDING OFFICER. Time for debate on this bill is limited to 4 hours, to be divided and controlled by the Senator from Louisiana (Mr. JOHNSTON) and the Senator from New Mexico (Mr. DOMENICI), with 2 hours on any amendment in the first degree, except for one amendment each by Mr. GRIFFIN, Mr. GLENN, and Mr. JOHNSTON, and on two amendments by Mr. TOWER, on each of which there will be 1½ hours, on one amendment by Mr. MELCHER, on which there shall be 1½ hours, and on one amendment each by Mr. DURKIN and Mr. FORD, on each of which there shall be 1½ hours, with 30 minutes on any amendment in the second degree, and 20 minutes on any debatable motion, appeal, or point of order.

Mr. DOMENICI. I thank the Chair.

Mr. JOHNSTON. Mr. President, I yield myself such time as I may require.

Mr. President, the Public Utilities Regulatory Policy Act of 1977 is the fifth and last major portion of President Carter's proposed National Energy Act reported by the Committee on Energy and Natural Resources this session.

S. 701, providing energy conservation assistance to schools and hospitals, was passed by the Senate on July 20, 1977;

S. 977, the coal conversion bill, was passed on September 8, 1977;

S. 2057, the omnibus energy conservation bill, passed on September 14, 1977; and

S. 2104, providing for a natural gas pricing policy, passed on October 4, 1977.

The Committee on Energy and Natural Resources completed action on the Public Utilities Regulatory Policy Act on September 19, 1977, and filed its report on September 20, 1977.

I ask unanimous consent that a summary of the bill and a copy of the cost estimate provided by the Congressional Budget Office be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF S. 2114: THE PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

S. 2114 requires State regulatory authorities and each nonregulated utility above a certain size to report biannually to the Secretary of Energy information about variations in the demand for electricity or gas among various classes of customers as well as information on the costs of serving these classes of customers. If the information requested is not already available in the files of these institutions, the Secretary must reimburse the authority or utility for the cost of gathering any additional information required.

The Secretary of DOE is authorized to intervene on his own initiative in any utility rate or rate design proceeding held before a State regulatory authority. However, the purpose of the intervention is limited to advocating: (1) energy conservation, (2) efficient use of facilities and resources, or (3) equitable rates to consumers. The Secretary would have the same rights as any other party in the proceeding, except that he could not initiate or join in an appeal using authority under this Act. Authority to participate in ratemaking proceedings granted to the Administrator of the Federal Energy Administration in Title II of the Energy Conservation and Production Act (which will be vested in the Secretary of Energy on October 1, 1977) is not affected by the bill.

In the case of a nonregulated utility, the Secretary could intervene in any convenient proceeding dealing with rates or rate design. If no such proceeding is available, the Secretary may review the utility's rates and make recommendations to promote the three purposes cited above.

The Act instructs the Secretary to examine the methods electric utilities use in determining rates in order to assess how well their rates reflect variations in cost of service due to daily and seasonal time of use as well as the relationship between rates and the marginal cost of providing service to customers. He is also to consider to what extent the three purposes cited above may

be furthered by various rate reform approaches listed in the Act.

The Secretary is to report annually to Congress on the progress of the State regulatory authorities and nonregulated utilities and to report recommendations for further Federal action to achieve the three purposes of the Act.

The Secretary is also to study and report to Congress on gas utility rate design and address the effect of specific rate reform approaches listed in the Act on various aspects of gas utility service. Based on the study the Secretary shall develop proposals on gas utility rate design and include any recommendations of the Federal Energy Regulatory Commission. The study is to include an analysis of projected savings in natural gas and likely changes in the price of natural gas if the proposals were to be implemented.

The Secretary shall also report on any financial burdens the Act will impose on State regulatory authorities and the views of these authorities on the need for and desirability of Federal financial assistance.

The Act establishes a National Regulatory Research Institute under the auspices of the National Association of Regulatory Utility Commissioners and authorizes $2 million for each of fiscal years 1979 and 1980 for the Institute.

In order to encourage cogeneration of electricity and the production of electricity from solid waste or renewable resources the Secretary is authorized to exempt cogenerators and small power producers (less than 30 megawatts) from the requirements of certain Federal laws applicable to utilities. The exemption applies only to persons not primarily engaged in generating or selling electric power. The Secretary shall also issue guidelines to State regulatory authorities on regulatory steps that will encourage development of these sources of power.

In addition, those low-head, hydroelectric demonstration projects authorized in the Senate bill authorizing appropriations are exempted from the licensing requirements of the Federal Power Act. $10 milion is authorized for guaranteed loans to fund feasibility studies for such small hydroelectric projects.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 23, 1977.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2114, the Public Utilities Regulatory Policy Act of 1977, as reported by the Senate Committee on Energy and Natural Resources on September 20, 1977.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 22, 1977.

1. Bill number: S. 2114.

2. Bill title: Public Utilities Regulatory Policy Act of 1977.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 20, 1977.

4. Bill purpose: This bill would amend the Energy Conservation and Production Act by promoting conservation, efficiency, and equitable rates in electric and gas utility systems. The bill would require three reports to Congress: (1) rate making and load management practices, (2) gas utility rate design study, and (3) financial burdens of state regulatory authorities. The bill would also establish and authorize appropriations for a National Regulatory Research Institute to provide state regulatory authorities with information. Lastly, the bill would authorize up to $10 million in loans for hydroelectric project feasibility studies.

5. Cost estimate

[By fiscal years, in millions of dollars]

Fiscal year 1978:	
Authorization level	[1] $15.8
Estimated costs	5.4
Fiscal year 1979:	
Authorized level	2.0
Estimated costs	8.8
Fiscal year 1980:	
Authorized level	2.0
Estimated costs	6.5
Fiscal year 1981:	
Authorized level	------
Estimated costs	3.7
Fiscal year 1982:	
Authorized level	------
Estimated costs	3.1

[1] Includes estimated cost of studies authorized in Sections 8, 9, 10 and 12.

The costs of this bill fall within budget function 300.

6. Basis for estimate:

Section 5: Information and Reports.—This section of the bill would allow the Secretary of Energy to reimburse utilities for the cost of obtaining information on shifts in electric loads and costs of consumption. No cost for this section is included in this estimate, since it is not possible at this time to project the likely data requirements of the Secretary of Energy, and the extent to which reimbursement of utilities will be required in order to obtain such information.

Section 6: Federal Participation.—This section would allow the Secretary of Energy to intervene in state regulatory proceedings. For the purposes of this estimate it was assumed that a staff of 40 would be necessary to carry out the purposes of this section. The estimated costs in fiscal year 1978 would be $1.5 million, increased annually thereafter for inflation.

Sections 8, 9, and 10: Studies.—These sections of the bill would require reports to Congress on (1) rate making and load management practices, (2) gas utility rate design study and (3) study of financial burden of this action regulatory authorities. For the purpose of this estimate, it was assumed that the first study on rate making would not require additional funds, since it falls within the scope of present FEA activities. The gas utility rate design study was estimated to cost $5 million, with a disbursement rate of 40 percent and 60 percent the first and second years, respectively. The last study on the financial burden on regulatory authorities was estimated to cost $300,000 with the entire amount spent the first year.

Section 11: National Regulatory Research Institute.—This section would establish a National Regulatory Research Institute under the auspices of the National Association of Regulatory Utility Commissioners. Section 15 would authorize the appropriation of $2 million in each of the fiscal years 1979 and 1980 for this purpose. It is estimated that these funds would spend out 90 percent the first year and 10 percent the second year, based on disbursement rates of similar organizations.

Section 12: Cogeneration Guidelines.—This section would require the Secretary of Energy to provide guidelines on requiring electric utilities to offer to sell and purchase electric energy to and from other cogenerators or small power producers. The costs of this section are estimated to be $500,000, with a disbursement rate of 80 percent and 20 percent the first and second year respectively. These costs are estimated to cover manpower requirements for developing these guidelines.

Section 14: Hydroelectric Projects Feasibility Studies.—This section would authorize the Secretary of Energy to make loans to municipalities, electric cooperatives, industrial development agencies, and non-profit organizations to assist them in studying the feasibility of utilizing a hydroelectric project for electric generation. It was assumed that the loan would begin to be paid back after five years, the interest rate would be 7 percent, and the entire $10 million authorized in Section 15 would be disbursed over a five-year period beginning in fiscal year 1978. One third of the loans are assumed to be cancelled due to infeasibility of the project. The net outlays are estimated to be $1.2 million in fiscal year 1978, $2.3 million in fiscal year 1979, $2.9 million in fiscal year 1980, $1.8 million in fiscal year 1981, and 1.3 million in fiscal year 1982.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 9, 1977, CBO prepared a cost estimate of H.R. 8444 as passed by the House of Representatives. Part V of H.R. 8444 is similar to this bill. The differences in costs are attributable to various provisions in H.R. 8444 for loans and grants for hydroelectric projects, and grants to state agencies.

9. Estimate prepared by Leslie Wilson.

10. Estimate approved by C. G. Nickols, for James L. Blum, Assistant Director for Budget Analysis.

Mr. JOHNSTON. Mr. President, the committee deliberations on this legislation were characterized by a strong consensus among members with respect to the basic policy reflected in S. 2114. This bill, which is supported by members of both the majority and minority of the committee, is fundamentally different from the proposed legislation submitted by the administration. The bill has even less in common with the House counterpart, H.R. 8444.

The committee is united in the belief that the policy direction taken by S. 2114 is a correct one. Let me explain why.

The legislation originally proposed by the administration, part E of S. 1469, contemplated a radical extension of Federal authority into the highly complex matter of the design of retail rates for electricity. These rates have been traditionally set at the State level, of 10 by persons elected for this purpose. Retail electric utility rate policy has in the past been shaped by a host of decisions arrived at on the local level, taking into account unique conditions of geography, climate, social and economic structure and the desire of the people of a State. The diverse character of rate structures in the various States in many respects reflects the diversity of the country.

The administration bill proposed to establish Federal policies with respect to the methodology of ratemaking and to superimpose these policies on the decisionmaking process at the State level. If, in the judgment of a single Federal official, the Administrator of the Federal Energy Administration, a State failed to implement Federal policy in designing rates, the Federal Government would then step in.

The committee felt strongly, and the committee hearing record clearly showed, that at present there is no clear justification for such an extension of Federal authority. At a later time, after more study and experimentation with alternative rate structures, it is conceivable that a case for enforcement of some sort of

Federal standards could be made. But that case simply cannot be made based on the record available at this time.

Accordingly the committee has reported a bill to the Senate which adopts a far more cautious approach than that contained in either the administration or House bills. The committee does recognize the need for a statement of Federal purposes in the area of utility ratemaking and for a means of conveying Federal recommendations to State regulatory authorities and nonregulated utilities. Therefore, the legislation reported sets forth as broad national purposes the encouragement of: First, energy conservation; second, the efficient use of utility facilities and resources; and third, equitable rulemaking, and authorizes the Secretary of Energy to intervene in rulemaking procedures before State commissions in support of policies which further these purposes.

Enactment of the committee bill would in no way foreclose stronger action by Congress at a later time. In fact, S. 2114 is specifically designed to bring about conditions under which intelligent decisions can be made with respect to a national policy on utility rates.

The bill contains broad Federal information gathering authority to permit assessment of State capabilities with respect to ratemaking, analysis of costs of providing utility service and identification of the factors which determine the demand for electricity and natural gas.

The bill provides for a vigorous advocacy role for the Federal Government in encouraging the adoption by State commissions of rate structures which are energy- and capital-conserving and which are equitable to consumers. This authority is established in addition to, and not in any way in limitation of, authority available in other law. However, the role of the Federal Government is one of advocacy only. The power to decide would remain where it is, in the hands of local officials.

The committee would oppose at this time any amendment to S. 2114 that would confer upon the Federal Government the authority actually to interfere and impose on a State government a Federal decision with respect to the rates in that State. Unless the Senate directs us otherwise, we intend to adhere to this principle steadfastly in conference with the House.

Mr. President, the committee bill is silent on one of the questions of policy raised by the administration in part E of S. 1469. This is the issue of the authority which should be granted to the Federal Energy Regulatory Commission to order—physical interconnection among electric utilities; the "wheeling" of electric power between two utilities across the transmission facilities of a third; and the pooling of the generation facilities of different utilities to assure the most efficient use of resources.

The committee felt that the issues in this area were particularly complex, and that difficult questions which have little relevance to energy conservation or the efficient use of facilities and resources are inextricably intertwined with these proposals. At the committee's direction my subcommittee held an additional hearing on these issues after S. 2114 was ordered reported. The testimony at that hearing confirmed the committee's judgment concerning the complexity of the issues, but also provided guidance concerning the nature of the limited authority which could be justified. As a result, I will offer an amendment which is cosponsored by Senators DOMENICI, JACKSON, and FORD addressing FERC authority to order the physical interconnection of utilities. The authority granted by the amendment is limited to the achievement of specific purposes, which I believe are justified. The amendment does not address the much more complex issues of wheeling and pooling, which really involve value considerations unrelated to the purposes of a bill dealing specifically with energy conservation and efficiency.

Mr. President, together with this amendment, I believe that we will have a good Senate bill that will lead to regulatory reform and thus result in the conservation of energy as well as in more efficient utilization of utility facilities and resources. And yet we will accomplish this without the transfer of a vast amount of regulatory power from the States to the Federal Government. It is a sensible bill, a bill we can defend in conference with the House. We recommend that it pass.

Mr. President, this has been energy year with the Energy Committee. We have held hearings beginning at 7 a.m. and 8 a.m., and we have had hearings lasting 6 hours at one time, all in an effort to get out the tremendous press of business which has come to the Energy Committee. We have dealt with all parts of the Carter energy program except those which dealt with tax. Indeed, even with the tax aspects of that energy program we have held hearings. To say that the workload was monumental is not an overstatement.

One of the bills of the Carter energy program has been utility rate reform. I would prefer "rate change," because the word "reform" does not always apply just because something is changed.

The elements of that program, as initially conceived, may well be reform and may well be in the interests of the American people, the American consumer. But, Mr. President, changes in electric rate reform are also very dangerous in that if changes are made at the Federal level to upset a longstanding superstructure and infrastructure of rules and regulations all of which are well-known and well understood by the utility industry, then by that change, and by the uncertainty which that change in Federal regulations will bring, we could well dry up the sources of funding for all of the utility expansions which need to be made over the next few decades.

For that reason, the Energy Committee felt it appropriate, indeed necessary, to go into this field of utility rate reform with the greatest degree of caution, and not to move unless we understood precisely what we were doing and precisely what the effects of what we were doing were on the utility industry, as well as on the American consumer.

We considered such things as lifetime rates, time of day rates, whether we ought to come up with Federal rules that require the State regulatory bodies to enact these kinds of rules.

We heard a great deal of testimony within those difficult time constraints we had. The overwhelming bulk of the testimony was that these things are in an experimental stage now, such things as time of day rates, lifeline rates, and all the other changes; that we should not proceed into those things now but rather do some experimenting before we move.

For that reason, the committee, I believe, was first of a mind just to kill the whole program and say, "Let us wait and come back next year, in an orderly manner when we have the time to consider it, and have the time to consider what the effects of doing some of these things will be."

After more mature consideration we thought that the best way to experiment, the best way to find out what these effects are, and to bring this whole matter out in public debate, would be to allow the Secretary to intervene on his initiative in State regulatory proceedings, and in that intervention to argue for the changes they ought to have, to argue for lifeline rates, if that happens to be the thing before the Secretary at that time, or time of day rates, or all the other things which can be viewed by the Secretary as reform. In other words, to put out these ideas, reinforced by the tremendous capacity the Secretary has to acquire facts and data, but to be able to go before the State regulatory commissions and argue for those changes. If they accept them, fine. If they do not, then we do not authorize any additional right of appeal of the Secretary, either in State court or in Federal court or, indeed, to even join in that appeal, the reason being that we do not want to create a whole new common law built up at the behest of the Secretary, and established on a case-by-case basis.

We want, rather, for the time being, to have the Secretary go to the marketplace of ideas, the forum being the State and regulatory bodies, and have them make the decision based on the force of the logic and persuasion that the Secretary has, rather than on the big Federal club which we refuse to give him.

So that, essentially, Mr. President, is the direction of this bill. I wish to emphasize that this is no defeat for the Carter administration. This is no battering in the head of an essential element of Carter's energy program. It is true that this is one of the five parts of the Carter energy program. But in making these changes, we have not, in my view, taken away one of the mainstays of the Carter program. The mainstays of the Carter program have to do with oil, gas and coal, and conversion to coal and whether we enact the crude oil equalization tax, promote insulation, and those sorts of things. This bill is but a small part of it.

We are not saying no to change and reform in utility rates, we are saying that it is too early. This is the first year we have had hearings in the Senate on utility rate reform. We are not ready to move. We feel very strongly that we are not ready to move.

Let me say one further thing on the question of the Carter energy program, and I think the administration would do well to take this unsolicited advice. That is to realize that their energy program was put together in a period of 90 days, from January 20 to April 20. It was a monumental job, calling for great courage, great ability, and a great amount of work, performed under huge constraints and pressure. I think it was performed very well. I think it was a great act of leadership for the President, not only to put together the program, but then to sell it to the American people in television broadcasts and tell them that they were going to be called upon for sacrifices and tell them that it is the moral equivalent of war. This was the act, I think, of a great President, to do that.

Having done that great work and having made those courageous acts, for the administration or the President now to say that that product, put together in a period of 90 days, must be enacted without change and must be enacted in all its substantial parts, I think, is not only wrong, but is unrealistic. I think it is wrong for energy, for conservation, and for the American public.

The committee acted in that spirit of cooperation with the President, but with the recognition that to move too far too fast too soon in some of these fields would be unwise for everybody, including the consumer, including those who are most interested in conservation. I know that last category includes the members of the committee.

So, Mr. President, we think we have a good start on utility rate reform. This is not the last chapter or the last word, but it is a start that we felt we could not step beyond on pain of taking great risks with the American public, with conservation, and with the future of the utility industry in this country.

I yield the floor to my distinguished friend from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself 5 minutes.

I rise to associate myself with the remarks of the distinguished junior Senator from Louisiana. I want to comment briefly on how I view what the committee did and where we are.

First of all, Mr. President, the goals of this legislation are clearly stated. They are to try to conserve energy and maximize the utilization of facilities. Those were the two prime goals of the President's package with reference to utility ratemaking in the United States. The committee added a third goal, to seek to do equity.

The only questions we had were, how do we accomplish these three goals and what is the Federal role with reference to the individual States and their utility ratemaking commissions? I think it is safe to say for the U.S. Senate that the committee, by a rather compelling majority, concluded that there are a couple of things that we did not want to do. Among those are that we did not want, at this time, to preempt the ratemaking role of the commissions in the individual States; that we did not know enough; that we might cause confusion and delays in an already fragile-capitalized industry, where delays would amount to less development, less building, less construction. So the committee, by a rather compelling majority, concluded that, whatever we do, we did not want to preempt and dictate to the ratemaking commissions in the country.

Second, we did not decide that the Federal Government knew how to tell each State to effect these new kinds of ratemaking schemes, whether it be marginal ratemaking or time of day, whether it be any of the three of four suggested approaches. We know they are good conceptually, but the committee, by a rather compelling majority, indicated clearly that we did not want the Federal Energy Office to be down at the State level at this point in time, imposing these new systems by operation of law. So I believe that, rather than do nothing, we came up with a rather good scheme.

The real inherent parts of this scheme are to indicate our goals with reference to electric energy production. They are that we have the goal to conserve, to maximize and utilize the facilities in this country, built now and built in the future, and to seek to do equity. Once having established those goals, we said that we thought it was appropriate for the Federal Government to make an effort to push the States ahead, to move them, to cause them to look clearly at these new approaches. We would give our Federal Government the right to intervene in rulemaking hearings at the local and State level, but this intervention is very clearly defined by the committee. It means that, as a matter of right, they can get involved and go before these tribunals and make the case for this new approach. They can participate, ask questions, submit their position, be very public, bring evidence and facts before them that encourage them to move in that direction, or call facts to their attention. At that point, this bill says, the Federal Government's intervention is finished. That means they do not take this cause and go through the court system, delay the procedings as if we had told each State, "That is what we want," because we do not know within that State whether that would end up being good in terms of our overall goals or whether it would, because of certain peculiarities in the State, cause harm.

As I view this, when we couple that part of the bill with the obvious efforts to bring facts to the National Government as we proceed through this kind of limited intervention, to bring backup to the Federal Government, and thus to Congress, what is happening with the State regulatory commissions in the next 2 or 3 years—when we couple those two, factfinding and limited intervention for these particular goals—I think we have a package that deserves the support of the Senate. It will, indeed, send a clear signal to those States that, through their commissions, do not care or appear to be calloused or think there is nothing new in the field of ratemaking, that this energy crisis has brought into focus something that they ought to consider. It will bring intervention there; it will bring public notoriety there; it will bring facts up to the National Government as to what and how they are doing this in the intervening years.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DOMENICI. I yield myself an additional 2.

This is certainly short of preemption. It is a cautious but firm approach. It signifies a genuine interest on the part of our National Government toward the utility industry and ratemaking bodies in this country, that we want conservation. maximum utilization of facilities, good planning, and equity, if possible.

I think the committee has done the right thing in being cautious, but firm.

Mr. President, I reserve the remainder of my time.

Mr. JACKSON. Mr. President, S. 2114, the Public Utilities Regulatory Policy Act, is the first legislation reported by the Committee on Energy and Natural Resources dealing with public utility rate policy. We received this jurisdiction earlier this session with the adoption by the Senate of Senate Resolution 4.

The committee has devoted more hearing time to this issue—6 days—than to other provisions of the President's energy bill because the issue is a complicated one and also because our experience with it is not extensive. The legislation we have presented to the Senate reflects the concern and caution our committee feels about the issue of electric utility policy. S. 2114 is not as far-reaching as the bill the administration proposed in April. However, to report more ambitious legislation dealing with this policy area, legislation in line with that proposed by the administration, it would be necessary to ignore both the committee's hearings, as well as our own collective judgment.

The overwhelming message of those hearings and the mail received by the committee and its members has been to warn of the danger of attempting radical changes in Federal policy with respect to public utilities without extensive additional study and analysis. S. 2114 as reported by the committee will insure that this learning and study process is accelerated. Through the gathering of information and data and through active participation in utility ratesetting procedures at the State level, the background for an intelligent and carefully thought-out Federal policy toward the Nation's public utilities can be developed.

I believe I speak for both the majority and minority when I say that we feel that S. 2114 is a good bill. It is an appropriate bill, one which faithfully reflects the clear preponderance of advice given the committee at its hearings.

The Nation's utilities have borne the brunt of the enery crisis. They have had no choice except to pass rising energy

costs on to their customers. Their construction programs have been devastated by inflation and their operating costs have been multiplied by the same acceleration in energy prices. Public utilities send each customer a monthly reminder of the crisis in energy costs, and each customer resents the utility for it. There is no more pervasive source of public discontent than the outrage Americans feel over utility bills.

It would be nice to say that we have reported legislation which will offer some relief from this widely detested increase in consumer cost. But no one has proposed such a bill. The administration proposal will not do it. The House bill will not do it; and S. 2114 will not do it. Utility rates are going to continue to rise, both because fuel prices will continue to rise and because national policy has been unable to bring down the rate of inflation.

There is no simple answer to these rising utility rates. We will be struggling to establish policies to deal with the problems of the Nation's public utilities in several future sessions of Congress. The bill we are considering today represents a responsible beginning of what will be a long-term responsibility for the Federal Government in encouraging the adoption of rate structures which are equitable, which encourage the efficient use of existing and proposed utility capital facilities and which slow the rate of growth in energy consumption without being economically disruptive.

The Committee on Energy and Natural Resources recommends that the Senate proceed cautiously in establishing new Federal utility policies, by gathering information, investigating innovative approaches and techniques and advocating enlightened utility regulation at the local level. S. 2114 reflects this view.

I strongly urge my colleagues to accept the committee's advice. I urge them to refrain from offering amendments which would carry Federal involvement in the regulation of utilities beyond the point of the prudent beginning set forth in the reported bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. BARTLETT. Will the Senator yield to me briefly?

Mr. CURTIS. Mr. President, I yield briefly to the distinguished Senator from Oklahoma (Mr. BARTLETT).

Mr. BARTLETT. Mr. President, I will be very brief, and I thank the distinguished Senator from Nebraska.

I want to congratulate the two floor managers for a lot of hard work and for doing a good job, taking a bill that I think would have definitely gone too far at this time and changing it after lengthy hearings and deep consideration to a bill that I think moves in the right direction. It provides the Federal Government an opportunity to present its case, to enter into the arena of debate, to have an opportunity to have its ideas heard, but not to be in a position of dictating or of establishing a new order in the utility ratemaking area.

I think the utilities, since they are based in a State and are subject to very close scrutiny by the press and the people of that State, because their activities affect virtually every consumer's pocketbook, are trying to do a very good job and that the regulatory bodies in the various States that control the utilities are also trying to do a very good job to protect the interests of the consumers and the interests of the citizens of that State.

So I think the steps that are taken here are steps that will be carefully watched. It will give the Federal Government a chance to present its ideas, but it will also retain the responsibility within the States of governing their own utilities, which I think at this stage certainly is called for, and it might be that it should be retained forever.

I would have to be convinced that the utilities were completely out of line and that the Government bodies in the various States had not done a good job before I would be convinced that the Federal Government should intervene.

I personally do not think that is the case. But we will have a chance to see. We will have an opportunity to observe just what the Federal Government has in its mind and then just what the governing bodies in the various States have done.

Commissions which do regulate the utilities are right under the gun of the consumers and the citizens of the State and, by and large, I think they have done an excellent job. Certainly in our own State I am convinced of that, and I think in the other States that undoubtedly is also true.

I thank the distinguished Senator for yielding to me. I withhold the remainder of my time, Mr. President.

Mr. President, would the Senator yield further for just a moment?

Mr. CURTIS. Yes.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Mike Crisp of Senator BAKER's staff be granted privileges of the floor during consideration of this matter, and also Darla West and Ron Shiflet, of the staffs of Senators DOMENICI and MCCLURE, respectively.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Will the Senator yield?

Mr. CURTIS. I am happy to.

Mr. FORD. Mr. President, I ask unanimous consent that Jim Fleming and Mike Gatlieb of my staff be granted privilege of the floor during the debate and voting on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I thank the Senator.

UP AMENDMENT NO. 863

Mr. CURTIS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. CURTIS) proposes an unprinted amendment numbered 863.

Mr. CURTIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place add a new section:

"SEASONAL DIVERSITY ELECTRICITY EXCHANGE

"SECTION —. To encourage and expedite benefits to the public of the bulk exchange of electric power between certain areas having diverse peak demand seasons and thereby to increase fuel efficiency and to reduce use of natural gas and foreign oil, upon issuance of a Presidential Permit for transmission facilities at the international border with Manitoba, Canada, to exchange electric power among electric utilities which together provide service in Manitoba, Canada, and in North Dakota, South Dakota, and/or Nebraska the permittee or permittees shall be entitled to exercise the power of eminent domain of the United States to take and secure lands, easements, rights-of-way, and other interests for the construction, operation, and maintenance of electric transmission lines and appurtenant facilities to accomplish such exchange. The district courts of the United States in which such property interests are located shall have jurisdiction of proceedings to acquire such property interests under this section, and the proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure, provided, however, that the petitioner or petitioners may exercise the right of the United States to file with the petition or at any time before judgment a declaration of taking in the manner and with the consequences, but in its or their name, provided by sections 258a, 258b, and 258d of Title 40, United States Code. This section does not supercede the authority of the State public utility commissions to regulate the transmission facilities within their respective States in any manner not inconsistent with the purpose of this section or supercede any right of any person to appeal a decision of such a commission in the courts of the State."

THE MANDAN ELECTRIC TRANSMISSION EXCHANGE PROJECT

Mr. CURTIS. Mr. President, this amendment is to authorize the use of Federal eminent domain for construction of the Mandan electric transmission line.

Mr. President, the Mandan project would involve construction of a 450/550 AC/DC transmission line from Manitoba, Canada, through the States of North Dakota, South Dakota, and Nebraska. The project would be the first international and interstate electric transmission exchange system built in the United States. It would provide an electrical transfer capability of 1,000 megawatts and is now scheduled for completion by 1984. The estimated cost of $550 to $600 million would be borne totally by the participating utilities. They include Manitoba Hydroelectric Board, the public corporation providing electrical service for the Province of Manitoba, Canada; and in the United States, four electric utilities including one private utility, Otter Tail Power Co. of Minnesota, and three public utilities: Minnkota Power Cooperative of North Dakota, Basin Electric Power Cooperative of North Dakota and South Dakota, and Nebraska Public Power District.

The Mandan partners provide retail and wholesale electricity for nearly 1 million customers. The project will be of primary benefit to the retail and wholesale customers and members of the for U.S. utilities in the States of North Dakota, South Dakota, Nebraska, and Minnesota; of direct benefit to other utilities

interconnected and with exchange agreements with the U.S. partner utilities in the States of Montana, Wyoming, Colorado, Kansas, Missouri, and Iowa; and of indirect benefit to a larger area of electrical customers who are interconnected with the U.S. utilities in the Mid-Continent Area Power Pool.

Mr. President, the Mandan project is not controversial. It involves no Federal funding or future Federal authorizations or appropriations.

The project will provide up to 40 percent more electrical energy for the participating utilities during their peak electrical demand periods. The project will operate by providing a transmission exchange with the southern utilities in Nebraska and South Dakota transferring excess electric generation to the northern utilities in Canada and North Dakota during their peak demand seasons in winter time; and with the northern utilities transferring their excess electrical generation to the southern utilities in South Dakota and Nebraska during their summer peak demand.

Mr. President, here is an unusual opportunity at a time that we have energy shortages and wish to conserve. A plan is worked out for us to exchange energy with Canada so that they may supply our needs here when we need it, particularly during the irrigating season, and we, in turn, can send to Canada excess power that they need in the winter time.

The Mandan project will provide for a substantial increase in electrical energy that would not otherwise be available except by huge capital outlays and construction of additional power generation facilities by the partner utilities in the United States. The winter excess generation from the summer utilities will be provided from generation facilities now existing or under construction in those areas. The excess winter generation for use during the summer peaking periods in the south would likewise come from generation facilities now existing or under construction in the north. The primary facility making this exchange transmission system possible is the new large hydroelectric transmission plant on the Nelson River in Canada.

The Mandan project will take advantage of nonpolluting clean sources of energy and of peak production capacity of the partner utilities to maximize efficient use of generation capacity, thereby providing a maximum conservation of electrical energy and natural resources.

Mr. President, my amendment to provide Federal eminent domain will insure timely completion of the project and maximum utilization of the available electrical energy. Although the U.S. utilities now have the authority for eminent domain in the States in which they are located, provisions of State law in those States could lead to lengthy delays in the acquisition of rights-of-way for construction of the line. My amendment provides for normal recourse and settlement in Federal district courts under the Federal eminent domain provisions.

The Mandan project will be the first of its kind providing for transmission exchange on an international and interstate basis. It will serve as a model project for possible future similar projects between Canadian and United States utilities across the northern tier of States from the east to the west coasts. The Mandan project could be the forerunner of a series of transmission exchange systems to provide a substantial increase in electrical supplies for the United States at a time when the Nation is facing a serious energy situation.

Mr. President, this is a good project. It is not controversial and requires no Federal funding or appropriations. The Mandan would be a model project for transmission exchange between the United States and Canada, and as such it can be the forerunner of a series of systems to help provide badly needed energy for our Nation.

I hope that my colleagues will see the value and potential from this project, and I ask that my amendment be accepted on the energy bill we have before us at this time.

Mr. President, I should like the attention of the distinguished Senator in charge of this measure, to see if he might agree to the adoption of this amendment.

I presented this matter in an earlier bill from the same committee. At that time, Senator JACKSON expressed no opposition to it but suggested that we take it up on this bill as a more appropriate vehicle.

Mr. JOHNSTON. I yield myself 1 minute.

Mr. President, this amendment, as we understand, has been cleared all around. It involves no Federal regulation or Federal money. It simply involves getting the power of eminent domain as adjusted by and consistent with State law. It will serve the ends of energy conservation and efficient use of generating facilities by combining about five different generating facilities and allowing them best to use their facilities.

For that reason, we will accept the amendment. I congratulate the Senator for offering it.

Mr. CURTIS. I thank the Senator.

In response to the question of the manager of the bill, as to the clearance of this amendment, I wish to advise him as follows:

The distinguished chairman of the committee, Senator JACKSON, knows of this amendment. I presented it on a previous bill and he asked me to withhold and present it on this bill. The distinguished Senator from Wyoming, the ranking minority member on the committee, approves of this amendment as does the minority manager of the bill, Mr. DOMENICI. The States of North Dakota, South Dakota, and Nebraska all favor this bill. It has been taken up with the Governors of each State. The utility districts have all been in on negotiations and there is no objection to the passage of the resolution by any of them.

The Senators representing North Dakota, South Dakota, and Nebraska have been informed what we are doing here. The Senators from the State of South Dakota expressed some questions about the amendment. It was for that reason that the last sentence of the amendment was added.

So in response to the question as to clearance, it has been cleared with everyone, so they know that it was to be taken up at this time and there has been no request to hold or delay or withdraw it.

Mr. President, I ask for a vote on the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CURTIS. I yield back the remainder of my time.

Mr. JOHNSTON. I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, for the minority, we concur in the remarks of the Senator from Louisiana. We have no objection.

Mr. CURTIS. I thank both distinguished Senators.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

(Later the following occurred:)

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order to move to reconsider the vote on the amendment offered by the distinguished Senator from Nebraska.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. CURTIS. I thank the Senator.

Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 864 (PRINTED AMENDMENT NO. 1394)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposed an unprinted amendment numbered 864.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 16, line 18, insert a new section 15 as follows, and renumber succeeding sections accordingly:

INTERCONNECTION

SEC. 15. (a) Section 202 of the Federal Power Act is amended by adding a new subsection (g) to read as follows:

"(g)(1) Whenever the Commission, upon application of any State Regulatory Authority or any qualifying cogenerator as defined in the Public Utility Regulatory Policy Act of 1977 or any electric utility, and after notice to each State regulatory authority, qualifying cogeneration or electric utility affected and after opportunity for hearing, finds such action necessary or appropriate to carry out the purposes of paragraphs 2(a) or 2(b) of the Public Utility Regulatory Policy Act of 1977, it may by order direct an electric utility (other than a Federal agency)—to establish physical connection of its transmission facilities with the facilities of any other electric utility or qualifying cogenera-

tor; and to order such utility or qualifying cogenerator to sell energy to, to exchange with, and otherwise to coordinate with said parties only as necessary to effectuate the intent of the interconnection.

"(2) Prior to issuing an order under the authority of this subsection, the Commission shall inform the parties of its intent to issue such order and shall set a reasonable time for the terms and conditions of agreements among the parties affected by such order to be determined by negotiation among said parties. *Provided*, That said terms and agreements shall be subject to approval by the Commission and in the event that the parties do not reach an agreement approved by the Commission, the Commission may prescribe the terms and conditions of the agreement among the parties affected by such agreement, including the apportionment of cost among them and the compensation or reimbursement reasonably due to any of them. *And Provided further*, That if in the Commission's judgment, time is of the essence, the Commission may issue an order under the authority of this subsection prior to or during the negotiations among the parties.

"(3) The Commission shall have no authority under this subsection to—

"(A) compel the enlargement of generating facilities for purposes of this subsection, or

"(B) take any action that would result in an uncompensated economic loss to the electric utility or its customers, place an undue burden on such utility, unreasonably impair the reliability of the system of any utility, or impair its ability to render adequate service to its customers,

"(4) Except as provided in this subsection, compliance by any electric utility with an order issued under this subsection shall not subject any electric utility to regulation under the Federal Power Act if any such electric utility is not otherwise subject to regulation under such Act.

(b)(1) The first sentence of section 201(b) is amended by inserting "(other than section 202(g))" after "Part" and by adding the following at the end thereof: "The provisions of section 202(g) shall apply to the electric utilities and other persons specified therein."

(2) Section 201(e) is amended by inserting "(other than facilities subject to such jurisdiction solely by reason of section 202(g))" before the period at the end thereof.

(c) Upon the effective date of the Department of Energy Organization Act (Public Law 95-91) the authorities vested in the Federal Power Act by this section shall be transferred to and vested in the Federal Energy Regulatory Commission.

(5) For the purposes of this subsection the term: "electric utility" means a utility as defined in the Public Utility Regulatory Policy Act of 1977 which sells or exchanges electric energy;

Mr. JOHNSTON. Mr. President, this amendment is submitted on behalf of myself, the distinguished Senator from New Mexico (Mr. DOMENICI), as well as Senators JACKSON and FORD. It deals with the question of interconnection.

Mr. President, in the House there was a very broad provision relating to wheeling, pooling, and interconnection. In the House bill, the Commission was given authority to order any of these things to a full and complete extent—either wheeling, pooling, or interconnecting—and to do so at its own motion or discretion or on application of any interested party.

Frankly, it sounded very appealing to us on the committee when we first heard it, and we came very close to enacting the provisions in the form it came from the House, without a hearing. But some of us on the committee, out of an abundance of caution, even though we had this huge press of work, decided that we should at least call 1 day's hearing on this matter.

We did, and we found how very complicated and controversial and difficult is the whole field of wheeling, pooling, and interconnection. So, after a hearing which was supposed to last 2 hours but which spilled over for 4½ hours, and after further consideration by the members of the committee, we have come up with a consensus of the committee, which is this amendment.

First of all, it does not deal with wheeling. The reason it does not deal with wheeling is that the committee did not want to use the power of the Federal Government, at least not on the basis of the record and the hearings we have had, to permit what some utilities regard as piracy—that is, to require a utility to wheel the power from some other utility's generating plant to one of its own wholesale customers; in effect, to require a utility to furnish the rope to hang itself or to risk losing some of its retail or wholesale customers.

We tried to deal with that question and tried to make the effect of wheeling neutral as between competing utilities or rural electric groups, and we found that neutrality language, first, was very difficult to draft. We did not have a sufficient hearing record to draft properly the language of neutrality—if, indeed, that is possible. Second, we found that it did not please anybody to try to enact language of neutrality. It does not satisfy any of the competing forces—the public power group that wants wheeling, the rural electrification people who want wheeling—and it does not satisfy the utilities, either. In effect, we found that the subject of wheeling is a very great subject in itself which justifies a whole series of hearings, and it is not necessary to achieve the purposes of energy conservation or of efficient utilization of generating facilities.

This bill deals with the triple goal of energy conservation, efficient use of facilities, and equitable rates for consumers. Wheeling has nothing to do with that. Wheeling does have something to do with competition among various generating groups.

So what we did was to construct a very narrow provision on interconnection, which provides that, on the application of the State regulatory commission or a qualifying cogenerator or an electric utility, the commission may order interconnection if it serves one of the three goals I have just mentioned—that is, conservation, efficient use of facilities, or equitable rates for consumers.

The Commission itself cannot on its own initiative order this interconnection, but it must be on the application of one of the three parties I have just mentioned. Upon the application of one of these three parties the Commission must give notice to the parties involved, setting a reasonable time for them to negotiate. During that time, they can negotiate all the terms and conditions of the interconnection and then present those back within a reasonable time for the Commission to approve. If they do not agree within a reasonable time, or if time is of the essence, of if their own provisions are unreasonable, then the Commission can proceed to order the interconnection.

Under this amendment, the Commission shall have no authority to compel enlargement of generating facilities or to take any action which would result in an uncompensated economic loss to the electric utility or its customers, or to place an undue burden on such utility or unreasonably impair the reliability of the system of any utility, or impair its ability to render adequate service to its customers.

Mr. President, except as provided in this amendment, compliance by any electric utility with an order issued under this amendment shall not subject any electric utility to regulation under the Federal Power Act, if any such electric utility is not otherwise subject to it. What this means is that in a situation such as in Texas, where the Texas utilities most probably will be ordered to interconnect with the central-southwest group, the order to interconnect will not otherwise, except to the extent provided in this amendment, subject them to regulation under the Federal Power Act.

In effect, what we are doing here is to take a very narrowly constructed amendment which gets to that basic purpose we are trying to consider here, and that is energy conservation. Where you have a conservation problem or where you have a problem of inefficient use of utilities, then you can get the commission to order that interconnection, with the attendant pooling necessary to carry out that purpose.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. DOMENICI. Did I hear the Senator state there was a situation in Texas and Louisiana that would most probably be ordered under this new section? I do not think you meant that if you said it. It may be, but they may work it out themselves without it ever coming to the Federal Power Commission.

You did not intend to say we are prejudging anyone who might apply as coming under the jurisdiction and being ordered?

Mr. JOHNSTON. Well, of course not. I do not mean to prejudge that decision.

I will say I think that an interconnection will result either under the terms of this bill or voluntarily. I would hope that they would do it voluntarily. But much of the testimony we heard about this was related to that specific situation and, as I say, I do not mean to prejudge where justice is and what the terms of any interconnection ought to be. But it seems clear to me that an interconnection will result, and I hope it will occur voluntarily.

Mr. DOMENICI. Mr. President, will the Senator further yield on this point?

Mr. JOHNSTON. Yes.

Mr. DOMENICI. Mr. President, we can take this out of my time. Let me say I concur that we heard substantial evidence on this particular dispute that has existed for a long time and, obviously, the testimony impressed this Senator favorably in terms of there being a need.

I would like to, however, make this point so that the rationale for this bill will be understood, and see if the Senator from Louisiana agrees with me on this point.

As I envision this, what we were doing was causing the gradual evolution of the Federal Power Commission's involvement in this kind of situation.

The old act clearly defined a limited area of jurisdiction, after which if they had jurisdiction they had very broad jurisdiction with reference to the companies. Then this situation comes along, and we are not willing to give the Federal Power Commission a broad jurisdiction for these kinds of cases over which they had no jurisdiction intrastate, totally intrastate distributors, for instance, as one; REA as one, municipally owned is another, but rather we are saying if that kind of nonjurisdictional situation exists the parties or a State commission can ask the Federal Power Commission to assume jurisdiction for the very limited purposes stated here, the interconnect we have described here so specifically.

As we debated this and discussed it, it was my thinking that because this jurisdiction might be called upon by some of these parties that heretofore could not call upon it because of jurisdiction, it was my hope this would force them to sit down and bargain and enter into their own agreements. I think the Senator from Louisiana, as chairman of the subcommittee, agreed with that premise.

The reason I raise it here is it could very well be that the particular companies we heard about, Texas, Louisiana, and Oklahoma, Houston, and another company, may very well now be able to iron out their disputes if this becomes law or their differences, because if they do not, then for the limited purposes stated here the Federal Power Commission may be in position to order them to do it.

Is that how the Senator understands the strength of this, and one of the possible ways it will be of assistance in the market place?

Mr. JOHNSTON. That is precisely correct

I think the real answer to that is found on the first three lines of subsection 2 which says:

> Prior to issuing an order under the authority of this subsection, the Commission shall inform the parties of its intent to issue such order, and shall set a reasonable time for the terms and conditions of agreements among the parties affected by such order to be determined by negotiation among said parties.

So it is with precisely the spirit the Senator from New Mexico defines that we set about to effect this amendment; that is, that the Commission first gives notice, sets a reasonable time for negotiation and tells the parties to go adjust their own differences.

I think in that particular dispute between Louisiana and Texas utilities both parties recognize that it is in the interest of conservation and efficient use of facilities to have the interconnection.

I frankly think part of the reason that the Texas utilities resisted was because they did not want all the attendant Federal regulation that would be brought on them, and that is one of the reasons why we limited the scope of the act.

Mr. DOMENICI. Then, might I say to the Senator, on page 3 of the bill, line 16, you have alluded to the fact that if jurisdiction vests, if the Federal Power Commission is called upon by one of the parties, that can bring about the jurisdiction, and the committee in its report, and the Senate in its ratification of this, if they approve of this bill today, clearly intend that even after such jurisdiction vests, and even if such an order is effected, that the jurisdiction of the Federal Power Commission is still limited after that particular interconnect consortium to the powers granted to the Federal Power Commission by this section and not by the existing Federal Power Commission jurisdiction and authority; is that correct, Senator?

Mr. JOHNSTON. Precisely so. Subsection 4 sets that out in unmistakable terms.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. BARTLETT addressed the Chair.

Mr. HART. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. President, I ask unanimous consent that Leigh McDermott and Peter Gold, of my staff, be accorded floor privileges during the consideration of this measure and all the amendments thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Hal Brayman, of the staff of the Committee on Public Works, be granted floor privileges.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BARTLETT. I congratulate the two floor managers of this bill on this amendment. I would like to associate myself with this amendment——

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I yield the Senator as much time as he desires.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I ask unanimous consent that I be included as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I want to voice my support for the passage of the amendment to S. 2114 proposed by Senators JOHNSTON, DOMENICI, JACKSON, and FORD.

This amendment would provide limited jurisdiction of the Federal Regulatory Commission under section 202 of the Federal Power Act to order the physical interconnection of the facilities of electric utilities by authorizing the FERC to order, after an evidentiary hearing, a completely intrastate utility, now apparently beyond the FERC's jurisdiction, to establish such interconnection. They could also order a utility to sell and exchange power and to engage in other coordinating actions incidental to the interconnection, where this will further the overriding national interest in the conservation of scarce fuel resources and the most efficient use of facilities. In addition, reliability of service must be maintained.

This amendment will, among other things, provide a forum for effective resolution of the bitter interconnection controversy now going on in the Southwest, and open the door for the interconnection of utilities in that area, to the ultimate benefit of many thousands of consumers.

The amendment is carefully drawn so as to eliminate any possibility that the FERC might order an interconnection or coordinated action which will require the utility so ordered to enlarge its generating facilities, will impair its ability adequately to serve its customers, will expose it to uncompensated economic loss under standards currently applied by the courts, or will lower its reliability to an unreasonably low level.

Since the purposes that the FERC can pursue under this amendment are of critical concern to every electric utility customer in our Nation, and since the amendment likewise protects the legitimate interests of a utility with which an interconnection and coordinated action is sought, I believe that the amendment is in the public interest and should be passed.

I certainly like the idea of bringing the two sides together in the case where there is a desire to work out an interconnect and pooling, limited pooling, in connection with that interconnect, and I think it is desirable to see if the two parties can reach an agreement themselves.

I would like to ask the distinguished floor manager why, if they reach agreement, on page 2 in section 2 it would call for that agreement reached voluntarily by discussion between the two sides to be subject to the approval of the Commission? I can understand the second part of that passage which says that in the event the parties do not reach an agreement approved by the Commission the Commission may prescribe the terms and conditions.

I think if they have not reached an agreement I can see that the Commission then should be given the authority after the evidentiary hearing to prescribe the terms and conditions. But if they reach an agreement voluntarily, I wonder why section 2 would call for approval by the Commission?

Mr. JOHNSTON. Well, for two reasons: First, we would want to determine that that agreement is reasonable. But, secondly and more importantly, under this act the parties have it available to them to avoid FPC jurisdiction except to the limited extent of this act. So that by doing an act which would otherwise subject them to Federal Power Commission authority they are getting what amounts to a special exemption under this amendment. So if they are going to get that special exemption we feel the terms should be reasonable.

Mr. BARTLETT. It would seem to me if, without this provision, they today wanted to agree on an interconnect with limited pooling they could do so.

Mr. JOHNSTON. Well, no; they could do so only in pain of FPC jurisdiction.

Mr. BARTLETT. At the present time?

Mr. JOHNSTON. Yes; in other words, if you had a Louisiana and a Texas utility that interconnected, which would be interstate commerce, they would by that voluntary act be subject to FPC jurisdiction.

Mr. BARTLETT. Would that require FPC approval at that point?

Mr. JOHNSTON. I do not believe that interconnection would require approval, but they would come under the jurisdiction of the Federal Power Act 100 percent by making that voluntary interconnection.

Mr. BARTLETT. And this provides that they do not come under it?

Mr. JOHNSTON. That is right. In other words, if they want to use this act, they go to the Commission and ask the Commission to order it.

Mr. BARTLETT. And approve it, if it is a voluntary agreement.

Mr. JOHNSTON. That is right. Then they can avoid being subjected to any other regulation under the Federal Power Act if they are not otherwise subject to it.

Mr. BARTLETT. I see.

Mr. JOHNSTON. So that is the primary reason for having that approval.

Mr. BARTLETT. I thank the distinguished Senator.

Mr. JOHNSTON. Mr. President, I believe I am ready to yield back the remainder of my time, if my distinguished friend from New Mexico is also ready.

Mr. DOMENICI. Mr. President, I say to the Senator from Louisiana I know of no one who has any desire to be heard on this amendment.

This amendment was not filed previously, was it? It is an unprinted amendment, or was it a matter of record?

Mr. JOHNSTON. No; this amendment was introduced on September 27 and has been printed.

The PRESIDING OFFICER. It is printed amendment No. 1394.

Mr. DOMENICI. When the Senator was discussing the interconnect amendment, the Senator did not intend to state that the purposes for that amendment were the same three purposes as in the whole section 2 of this bill, conservation, efficiency and equity?

Mr. JOHNSTON. No; only the two, only conservation and efficiency. If I said conservation, efficiency and equity of rates, I misspoke myself. We include in this amendment only the A and B of the three purposes.

Mr. DOMENICI. I thank the Senator from Louisiana.

Mr. BARTLETT. I yield back the remainder of my time, and I am ready to vote on the amendment.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. ANDERSON). All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BARTLETT. I move to lay that motion on the table.

The motion to lie on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

UP AMENDMENT NO. 865

(Purpose: To exempt small hydroelectric projects of 15 megawatts or less on existing conduits from Federal Power Commission licensing requirements)

Mr. CRANSTON. I send to the desk an amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 865:

On page 17, after line 11, insert the following—

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, after line 11, insert the following:

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 31. (a) Except as provided in subsection (b) or (c), the Commission shall grant an exemption from the requirements of this part, including any license requirements contained in this part, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

"(1) is located on non-Federal lands, and

"(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

"(b) The Commission shall not grant any exemption under subsection (a) to any facility the installed capacity of which exceeds 15 megawatts.

"(c) In making the determination under subsection (a), the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

"(1) such terms and conditions as the Fish and Wildlife Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

"(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and the terms and conditions included in any such exemption.

"(d) Any violation of a term or condition of any exemption granted under subsection (a) shall constitute a violation of a rule or order of the Commission under this Act."

Mr. CRANSTON. Mr. President, I am offering this amendment on behalf of Senator CHURCH, Senator HAYAKAWA, and myself. The amendment provides that the Federal Power Commission shall exempt small hydroelectric projects constructed on conduits from the provisions of the Federal Power Act, including the licensing provisions. The amendment is limited to projects which are located on non-Federal lands and which have an installed capacity of 15 megawatts or less.

Mr. President, there is a potential of nearly 700 megawatts of hydroelectric power in existing conduits throughout the United States. I am particularly interested in this matter as there is a potential of approximately 200 megawatts in my State alone. However, this small hydroelectric project's potential has not been fully developed because of the large costs involved in complying with the Federal Power Commission licensing requirements. I understand, for example, that the city of Portland recently spent $500,000 on its application for two small hydroelectric projects totaling 36 megawatts.

In addition, the application processing time is quite lengthy, sometimes taking as much as 6 years, and this discourages applicants for small projects. By waiving the licensing requirement, this amendment should encourage the development of the small hydroelectric power potential.

Mr. President, the amendment does not exempt these small projects from environmental or any other State or Federal law. It does subject the projects to the provisions by the U.S. Fish and Wildlife Service and the State agency responsible for fish and wildlife resources. The amendment requires that the projects be modified if so recommended by these agencies.

Mr. President, it has been erroneously stated that this amendment would be dispositive of the current case before the FPC involving the Escondido Mutual Water Co. et al. I would like to make clear that this is not the case as the amendment pertains only to non-Federal lands and the Escondido case involves Indian trust and Federal lands. It certainly is not the intention of the amendment to interfere with the important test case of the FPC licensing procedures when Indian lands are involved.

Mr. President, this amendment is identical to the Moorhead amendment already approved by the House of Representatives. I hope it can also be adopted by the Senate.

Mr. JOHNSTON. Mr. President, we have had no hearings on this amendment, and therefore in its present form we would have to oppose it. I would wonder, however, if the Senator would be willing to amend section 31(a) to read as follows:

Except as provided in subsection (b) or (c), the commission shall have authority to grant an exemption, in whole or in part.

In other words, amend the phrase by stating "have authority to grant" in lieu of "grant", and add after "exemption" the words "in whole or in part."

Mr. CRANSTON. That is perfectly satisfactory to me. I so modify the amendment.

The PRESIDING OFFICER. The amendment is so modified. Will the Senator send his modification to the desk?

The amendment, as modified, is as follows:

On page 17, after line 11, insert the following:

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 31. (a) Except as provided in subsection (b) or (c), the Commission shall have authority to grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

"(1) is located on non-Federal lands, and

"(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agriculture, municipal, or industrial consumption and not primarily for the generation of electricity.

"(b) The Commission shall not grant any exemption under subsection (a) to any facility the installed capacity of which exceeds 15 megawatts.

"(c) In making the determination under subsection (a), the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

"(1) such terms and conditions as the Fish and Wildlife Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

"(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and the terms and conditions included in any such exemption.

"(d) Any violation of a term or condition of any exemption granted under subsection (a) shall constitute a violation of a rule or order of the Commission under this Act."

Mr. JOHNSTON. Mr. President, with this modification we will accept the amendment. What it does in its present form is grant to the Commission the authority to consider the application on its merits, and to give them authority to grant in whole or in part the exemption.

We are informed that the present Chairman of the FPC has relayed word to the committee that if he is confirmed as Chairman of the Federal Energy Regulatory Commission, which I am sure he will be, he will take such action as is within his authority to see that the Commission will expeditiously consider whether the California aqueducts should be exempted, assuming, of course, that this amendment is enacted.

So, with this authority, they will move expeditiously, and they will give the matter consideration.

Mr. CRANSTON. I thank the Senator very much.

Mr. DOMENICI. Mr. President, could I ask the Senator from California and the Senator from Louisiana a question?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. By giving the Federal Power Commission the authority to to grant this exemption, as the Senator from California does now with the amendment, and then saying "in whole or in part," I am a little bit confused, because I thought we were granting them authority to make exceptions not only for the specific ones the Senator has enumerated, but also for any kind that fit this, that are a part of hydroelectric facilities that have these characteristics.

Are we talking about that generically, or just the Senator's particular projects?

Mr. CRANSTON. Nationwide, generally.

Mr. DOMENICI. And the Senator from Louisiana understood that and that is what he desires?

Mr. JOHNSTON. Yes. That is the reason for the amendment, to give them the authority. In the original form the amendment would have required this exemption. In its present form, it will simply permit it.

Mr. DOMENICI. But it gives them the power to make this exemption in a general way if they so desire for this kind of facility that fits this definition.

Mr. JOHNSTON. That is correct.

Mr. DOMENICI. I have no objection.

Mr. DURKIN. Will the Senator yield for a unanimous-consent request?

Mr. JOHNSTON. Yes.

Mr. DURKIN. Mr. President, I ask unanimous consent that Tom Grahame, Chris Burke, and Ed Tanzman, of my staff, be granted the privileges of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, could I discuss for a moment with the Senator from Louisiana——

Mr. PEARSON. Will the Senator yield for a unanimous-consent request?

Mr. DOMENICI. I yield.

Mr. PEARSON. Mr. President, I ask unanimous consent that Ron Johnson, of my staff, be granted the privileges of the floor during the consideration of this measure.

The PRESIDING OFFICER (Mr. DURKIN). Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President. I yield back the remainder of my time.

Mr. CRANSTON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I want to thank both Senators.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

UP AMENDMENT NO. 866

Mr. STAFFORD. Mr. President, I have an unprinted amendment to the pending legislation, which I send to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont (Mr. STAFFORD) proposes unprinted amendment numbered 866.

On page 16 after line 17, add the following:

"(c) In addition to the authority of this section and in those cases where a public agency or electric cooperative requests it, the Secretary of the Army, acting through the Chief of Engineers and in cooperation with the Secretary, is authorized to provide technical assistance for any proposed small hydroelectric rehabilitation project at an existing dam, former industrial site, millrace, or other type of existing facilities."

Mr. STAFFORD. Mr. President, I yield myself so much time as I may require.

The Senate, on June 22, adopted my proposal to include in H.R. 5885 a small hydropower section which directed the Army Corps of Engineers to make a careful, national survey of former industrial sites and other old hydropower sites for reuse as new publicly owned powersites, then to offer the local agency the technical advice necessary to rehabilitate the site. This means that the corps will do the plans and design for the new project, then turn it over to local officials to implement.

This section directs the Chief of Engineers, acting with the Secretary, to develop the potential for new hydropower projects by rehabilitating former industrial sites, where such potential exists at places such as millraces, gristmills, waterwheels, and dams. This section does not authorize the corps to build any such power facilities, but to provide engineering and design services to local public agencies so that such agencies can go forward on their own to provide such power. This section is intended to serve rural and small communities, because that is where I believe the potential is most likely to exist. But it does not preclude its application elsewhere.

As one example, there are estimated to be 3,000 old damsites in New England, of which up to 30 percent have been estimated by the Corps of Engineers as possibly adaptable for new hydropower use today. In New England, 60 percent of the electric power is produced by imported oil; New England industry pays an average of 67 percent more for power than industry elsewhere in the Nation.

Even if only a fraction of those sites proved economical, I believe that the use of several hundred such projects, built by local interests and providing clean power locally and economically, must offer a real benefit to the economy of the region.

It should be noted that this approach should have a valuable historical as well

as environmental benefit. By rebuilding some of these older industrial sites, this Nation will be preserving much of the heritage upon which our society is based.

Mr. President, it is the hope of this Senator that the managers of the bill, with whom we have consulted, will be willing to accept the amendment.

Mr. JOHNSTON. Mr. President, as I understand it, the Senator has taken the word "directed" out of the amendment.

Mr. STAFFORD. This is correct, I say to the distinguished manager of the bill.

Mr. JOHNSTON. Mr. President, we are pleased to accept this amendment, because it will have a real potential for restoring hydroelectric rehabilitation to many of the old sites that, in years past, did generate electricity and did provide power. We think this is an appropriate use of our Corps of Engineers' design capacity. The corps, under this amendment, is not directed to provide this, but is authorized to do so. We expect that the corps would use the full extent of their authorization in any project that they think is at all feasible. The corps' help will be of great assistance because that technical assistance will include design on some of these projects.

We are glad to accept this amendment, Mr. President.

I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, for the minority, we are willing to accept the amendment. We commend the Senator from Vermont. This is, in my opinion, not only a good amendment, but a very appropriate use of the corps. There is much discussion about what they ought to be doing. It seems quite obvious to me that, with the engineering skills and technical skills that they have, if they can assist local groups in determining whether such a project is feasible and, if so, how to do it, I think it is an excellent utilization of existing expertise and we are willing to accept it.

Mr. STAFFORD. Mr. President, I appreciate the statements of the managers of the bill. I move the adoption of the amendment.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 867

(Purpose: To provide Federal guarantees of financing for small hydroelectric projects)

Mr. DURKIN. Mr. President, at this time I call up an unprinted amendment. I do want to note that this is not the amendment that I have the time reserved for on the consent agreement.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) proposes an unprinted amendment numbered 867.

Mr. DURKIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. I ask unanimous consent that Senators HATHAWAY, STAFFORD, and GRAVEL be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. Mr. President, this amendment to the Public Utilities Regulatory Policy Act of 1977, would accelerate low-head hydroelectric development. As many know, low-head hydroelectric power is energy which can be derived from small existing dams by installing turbines and other generating equipment. A recent study by the Army Corps of Engineers, ordered by the President, concluded that the equivalent up to 727,000 barrels of oil per day could be saved if every one of the approximately 49,000 existing dams across the Nation were outfitted to generate electricity. Obviously, many factors could prevent development of all of this potential. But the fact remains that low-head hydroelectric power offers a chance to reduce our reliance on foreign oil imports without many of the environmental costs which so often accompany other alternatives.

It has become evident that our energy crunch demands a program to begin commercialization of every feasible existing technology at the earliest possible date. A national workshop on low-head hydroelectric power, sponsored by ERDA during the week of September 5, stressed that a comprehensive Federal effort is needed to assist low-head hydroelectric development. My amendment represents a carefully limited approach to do this.

The amendment is intended to reduce the risk associated with rehabilitation of low-head dams so that local towns, utilities, electric cooperatives, nonprofit organizations, individuals, and corporations can take advantage of this energy source in a manner which is appropriate to their needs. It does this in two ways:

First. It authorizes Federal guarantees over the next 3 years to cover up to 75 percent of the cost of outfitting dams with generating equipment. With respect to public agencies, it guarantees 90 percent. Guarantees will be issued only where necessary to assure financing.

Second. It directs the Secretary of Energy to simplify and expedite the process of licensing small hydroelectric development in existing dams to reduce the time and expense of getting necessary Federal clearances.

Thus, this amendment creates a limited Federal program to reduce bureaucratic obstacles and provide assurances necessary to induce private capital investment. Lack of experience in the financial community with this energy source would otherwise make lenders leery of risking their money. It is a carefully restricted program, much less ambitious than the direct construction grants and loans called for by a similar version which already has cleared the House. It is the minimum necessary to induce low-head hydro development.

The President's energy program, as well as most of the energy initiatives Congress has taken this session, all aim at the same basic problem: increasing energy supplies to the maximum and reducing demand to the minimum. Low-head hydroelectric development offers a way to increase supplies—the more desirable of these two goals—without the problems associated with many other alternatives. A Federal program is needed in the short run to get it off the ground to make electricity available at the earliest possible date and help the financial community gain experience with the associated risks so that future Federal assistance is not necessary. I urge the Senate to support me in adding this amendment to S. 2114.

This has import not just in New England. There are several other areas of the country, the Atlantic and Gulf region, Mississippi, Arkansas, as well as New England, plus the northwest, that have potential for this.

Just Sunday, we heard, quite to our shock, that the Secretary of Energy is going to propose a $5 a barrel tax on oil imported into New England. We are about 55 percent dependent on imported oil. That would be the equivalent of declaring economic war in New England. That is why we have to go down the road to low-head hydro.

Mr. President, I am happy to yield to the Senator from Vermont.

Mr. STAFFORD. I thank the Senator for yielding.

Mr. President, I want to take a brief moment to say that I strongly support the Durkin amendment.

I would like to call particular attention to the provision that calls for a 90-percent guarantee for projects by public agencies on which the Corps of Engineers has done the study work under the new section 14(c) of the bill.

The revival of small hydropower projects holds real potential for our Nation, particularly in the Northeast, which is the area of the Nation most dependent on imported petroleum products.

This amendment would assure all communities the opportunity to participate in the hydro revival effort with an added incentive for small communities and electric cooperatives.

Mr. PRESIDENT, I hope the amendment will be accepted.

Mr. DURKIN. I thank the Senator from Vermont and I appreciate his support.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. DURKIN. I am happy to.

Mr. JOHNSTON. As I understand it, in general there is to be a 75-percent guarantee, based on the total cost of the project. But a publicly owned project, on which the study work is done by the Corps of Engineers, is to have a 90-percent guarantee, is that correct?

Mr. DURKIN. Yes; that was the suggestion of the Senator from Vermont, which I was happy to incorporate into our amendment, the feeling being that the public agencies in contemplation were small communities, municipal coops, and what have you.

Mr. JOHNSTON. My concern is this, and let me say at the outset that I support low-head hydroprojects. I think they offer great possibilities for generation of power in all kinds of parts of the country, even in my part of the country.

As the Senator knows, in committee I strongly supported him in getting the study which I believe is essential to build these. I do not believe we will be able to grant financing of them this year, anyway. I think we first have to study.

But my concern is with this amendment, if I understand it correctly, 75 percent of the cost of the total project can be loaned.

So, in effect, a private group could put together a corporation to build a low-head hydroproject, have no capitalization at all, and be able to borrow, with 100 percent Federal guarantee, 75 percent of the cost of the project without having any other assets, without taking any risk at all of private capital.

Now, am I correct in that?

Mr. DURKIN. No. Twenty-five percent, the loan guarantee to a nonpublic entity, municipal, co-op, whatever, would be a loan guarantee of a maximum of 75 percent.

So that the utility or the group organizing to utilize the low-head hydro would have to be on the hook, the 25 percent, so it is not——

Mr. JOHNSTON. My concern is this, let us say that a couple of engineers who are anxious to get some work decide it would be a good idea to dam up the creek over here.

Mr. DURKIN. If the Senator will yield, I think we can take care of the problem. The first thing we have to have is a dam. We are talking about, the major thrust of the program, existing dams that, for the most part, at one time or another did contain generating equipment.

The change is with the new type turbines. The much more efficient European turbines, and then hopefully the next generation of American turbines, which will be even better than the European ones, will be more efficient, where in the old days it was cheaper to import the oil than to utilize the water resources.

Now, in the existing dam site, in most of them, even if they have sold the dam, the community sold the dam or the utility sold the dam, they reserve the electricity generating rights, in some cases in perpetuity.

So I do not think we run into the problem that we have two or three engineers.

Mr. JOHNSTON. It applies only to existing dams?

Mr. DURKIN. Right.

The Senator made a point earlier that there would be trouble spending the money this year.

We do have $10 million for site-by-site feasibility studies, but there are some studies that have been going on. ERDA has been doing some work and there are sites that will be ready to go this year if that loan guarantee money is available.

I know of communities and I know of corporations that have old dams. They are ready to go if the loan guarantee money can come up this year.

Mr. JOHNSTON. What private corporation would own these dams?

Mr. DURKIN. In the old days, like in northern New Hampshire, the paper companies owned the dams on the rivers. That is the way, before trucks, they moved the logs.

Mr. JOHNSTON. Let me follow up and ask these questions.

Say we have a privately-owned dam and let us say we had the engineer, or whoever wanted to promote a project, so they form the ABC Corp. The ABC Corp. has no assets at all. They go to the paper company and say, "Gentlemen, we will build a dam on your project if you will give us"——

Mr. BUMPERS. I have a unanimous-consent request.

Mr. JOHNSTON. I will yield for the uanimous-consent request.

Mr. BUMPERS. Mr. President, I ask unanimous consent that Ark Monroe, Richard Arnold, and Pat Moran of my staff be granted privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Very well.

The engineers get together. They make a deal with a paper company whereby they say that for the first rights to use of the dam to generate electricity, they will pay the company x dollars per kilowatt hour of any electricity generated.

They have no assets in their corporation. They have a dam which would cost $5 million to build.

They then go to the Federal Government and say, "We have a good plan here. It will cost $5 million to build this dam. Would you lend us 75 percent of $5 million?"

At that point, can the Federal Government lend them 75 percent of $5 million?

Mr. DURKIN. First, it would not be a loan.

Mr. JOHNSTON. A loan guarantee. It is a 100-percent loan guarantee, is it not?

Mr. DURKIN. No, it is a loan guarantee of only 75 percent. It is a loan guarantee, as opposed to hard cash, and it is only 75 percent.

I point to page 2 of the amendment. Section (d) touches the area of the Senator's concern in a couple of places.

Mr. JOHNSTON. Permit me to interrupt.

I thought it was 100 percent of 75 percent of the project.

Mr. DURKIN. It is a loan guarantee.

Mr. JOHNSTON. It is a loan guarantee, but of 100 percent of 75 percent of the project.

Mr. DURKIN. That is correct.

Mr. JOHNSTON. So that in the situation I just presented to the Senator, these promoters——

Mr. DURKIN. No. If the Senator will look at page 2 of the amendment, in two places it touches the Senator's concern.

Subparagraph (d), in the middle of the page, gives the Secretary the authority to make the commitments and guarantees in such manner and subject to such conditions as he deems appropriate. That is the first part.

Second, one of the conditions the Administrator or the Secretary has is that there be an existent dam, that it has received all necessary licenses and other required Federal, State, and local approvals. I do not think the Secretary is going to authorize a license to a group of entrepreneurs who are sitting in a ski lodge and look out some day and see a dam and then pick up the Whole Earth Catalog in a neighborhood and say, "This is the way for us to skin the system." I think we have to take care of that by the requirement that the Secretary has set the conditions.

Mr. JOHNSTON. The point I make is that most of the loan guarantees I am familiar with are only for a percentage of each dollar, but this is a guarantee of 100 percent of the first 75 percent of the project's cost.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. DOMENICI. I think what the Senator is saying is that if you take an SBA loan, you find 90 percent in there; but it is 90 percent of the loan, so that the applicants are responsible personally for part of a loan, whether it is 95 or 75.

The way the amendment is drafted, it appears that the Senator has used 75 percent of the project that can be the subject of the loan, so the loan would be 100 percent federally guaranteed, if you put in the old dam as your 25 percent equity. I think that is the question the Senator is raising. Am I correct?

Mr. JOHNSTON. There is no requirement here I can see of 25 percent equity.

Mr. DOMENICI. Of the project. I do not know whether it will have to be equity.

Mr. JOHNSTON. It appears to me that they could come in and say, "We have a million dollar project and we want $750,000," and they never would be liable for the last $250,000. That is my concern.

Mr. DURKIN. It is a loan guarantee. This is not unusual language. This is the loan guarantee language that is adopted in all the ERDA authorizing language prior to this time. We lifted that language, virtually word for word, from the existing ERDA loan guarantee programs currently authorized.

Mr. JOHNSTON. Which ERDA program? Does the Senator recall?

Mr. DURKIN. Fiscal 1978—alternate fuel source.

Mr. JOHNSTON. In other language, where we were going to make loan guarantees, we would require that there be some minimal risk, at least.

Mr. DURKIN. Would the Senator be agreeable to changing it to 90 percent? Would that solve the Senator's problem?

Mr. JOHNSTON. If the owners of the dam would have to put up something at risk, that would make me feel a great deal better.

Mr. DURKIN. If it is all right with my cosponsor, we would make it a 90-percent loan guarantee of that 75 percent portion. If this is agreeable to the Senator from Louisiana, I ask that the amendment be so modified.

The PRESIDING OFFICER (Mr. HASKELL). Does the Senator ask that his amendment be modified?

Mr. DURKIN. Yes.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. DURKIN. I will do so in a moment.

The PRESIDING OFFICER. The amendment will be so modified, when received at the desk.

Mr. JOHNSTON. I should like to see the amendment when the Senator has prepared it. I will move on, in the meantime.

Why does the Senator pick the figure of $300 million? That is a great deal of money. What kind of basis does he have for determining that total sum?

Mr. DURKIN. Our research indicated that the loan guarantees might ultimately result in very little expenditure of Federal moneys. That would provide for 50 projects over a 3-year period. That would be roughly—I am sure it will not break down this way—one per State. By the time we have 50 projects coaxed along and encouraged by the Federal loan guarantee, with the increase in the price of oil and gas and the supply problem and the coal conversion problem, the European turbine will have proved itself, and there is money in the ERDA 1978 authorization to do studies and research upon even more advanced turbines than the American turbines. So by that time, with that combination of circumstances, the thing will fly by itself, and private financing will find it economically advantageous. But right now, it does need the boost of the Federal loan guarantee.

Mr. JOHNSTON. I yield to the distinguished Senator from New Mexico.

Mr. DOMENICI. First, I say to my good friend that I do not know much about this kind of energy production, but I understand that it is available. It certainly is going to be clean, and it is something we should attempt to develop. I just have a couple of basic questions.

Can the Senator explain to me why we need loan guarantees in this situation? I assume the Senator is saying that, but for this, some projects will not get ordinary marketplace funding, be it general obligation bonds or revenue bonds or private capital; that some of these kinds of projects will not find their way into feasibility and completion. I do not understand why.

Mr. DURKIN. That is correct. The language in the other body refers to hard loans—solid Federal cash. We adopted the loan guarantee approach because we felt that that gave the incentive, that gave the security, without putting up Federal cash per se, at least from the outset. We think most of these projects will be successful and that the loan guarantee will not be used. The reason why the Federal incentive is needed is that the utility companies, as a rule, turn up their noses at low-head hydro. So there is a disincentive in the utility industry to turn to low-head hydro.

That, combined with the reluctance of the banking community to bankroll something that some of the utilities frowned upon, has been one of the reasons why there is not more low-head hydro generation.

All the recent studies have shown that there is tremendous potential. Once we can demonstrate it to the utilities, demonstrate it to the environmental groups which have some concerns about this type of generation of power, as well as the financial community, and with the increase in oil and gas and coal conversion, this will take off by itself. This will have impact not just in New England but in the South and West as well.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Robert Lyon of my staff be allowed on the floor during the consideration of S. 2114.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Is the Senator saying because this is not very typical and has not been for quite a few years, that the typical marketplace is reluctant to recognize it and, therefore, we need some kind of guarantee program to get it started?

Mr. DURKIN. To demonstrate on-site generation of power at a lowhead hydrosite. That will convince the utilities, the banking community, and the public as a whole.

Mr. DOMENICI. On page 11 of the amendment——

Mr. DURKIN. Excuse me. There is tremendous potential here. When you take a remote site solar installation and a cogeneration installation, and take the paper industry which is on a stream, and then add a lowhead hydrodam with that paper facility, whether it be in New Hampshire or Maine or Georgia, or wherever, out in the Pacific Northwest, that will become almost energy self-sufficient with the combination of cogeneration, remote site solar, and lowhead hydro. We have to demonstrate to the financial community and others. Now it is a small band of people pushing it. But once we can demonstrate it is economically and environmentally sound—even the environmentalists are scared about it, putting another dam and Grand Coulee built on top of each other.

It is so that we can demonstrate to the environmental, economic and financial communities that this is a viable way to go.

Mr. DOMENICI. I am not opposed to all of these new approaches, and I think we will see 10 or 15 years from now precisely what you have said in many areas where there are just little localized, isolated ways to develop local energy which we have just completely abandoned in the last 30 years.

On the other hand, I am not adverse to Federal loan guarantees to develop new sources of energy. I just want to be sure that I, for one, am convinced it is needed, and that the marketplace will take care of it. Not because I do not want the Government involved, but I have a tendency to think when we do get involved we usually buy projects that do not work. We either accumulate an inventory of pink elephants, or whatever you call them, or we put our money in and they do not work. I just wanted the Senator's explanation of how this is it and why.

One technical question: On page 11 you talk about the "commission shall take such steps as are necessary," and then you say "within its existing authority to require," and then you enumerate "each utility within its jurisdiction will establish physical connection with all small hydropower projects; second, to establish conditions of service which require that any small hydroelectric project shall be provided with backup generation service from a utility at reasonable prices which do not discriminate," et cetera.

Do they already have that authority or not?

Mr. DURKIN. Well, the reason for that, Senator, is this is one of the problems. Again, the cogenerators, the small sources of generating capacity, whether they be remote sites solar or lowhead hydro, the utility will not buy the excess power for them or will not provide them backup power. That, plus the lack of assurance in the financial community, has left most of these programs with feasibility site studies. This does not abrogate State law because not only do I share the Senator's concern with another C–5A, and all the list of, the parade of, horribles the Federal Government has bought several times over, but I do not want to abrogate State law with respect to the regulation of utilities, at least not at this time, until we have given them a chance to reply and the Secretary to intervene.

So this does not get into the interconnection question. That has been raised before, that we were getting into the whole question of wheeling, pooling, interconnection, and all those exotic things we discussed in committee.

This just says if you have that—and we put this in the cogeneration and the other program as well, that they cannot, the utility cannot, deny the lowhead hydrosource backup power or they have to buy the excess power at cost, at not any subsidized rate.

Mr. DOMENICI. Well, the Senator did not answer my question. I understand the Senator's explanation. Does the Federal Power Commission have the authority to do these things now or are we giving them this authority in the Senator's amendment?

Mr. DURKIN. We do not give them any new authority.

Mr. DOMENICI. Why do we need it in the bill?

Mr. DURKIN. Because to get around the concern I mentioned before. If you have that lowhead hydrodam and turbine, and there is no place to peddle the power, and if the utility wants to cause difficulties, they will not buy it. We did not intend to give them any additional authority. But, to be honest with you, I am not sure of the extent of their authority today.

Mr. DOMENICI. I would say to the Senator I do not know whether I will end up supporting his amendment or not, but I might say I really would object to putting this kind of authority in as a mandate. I would support, if you would strike it, I would support the language that would indicate the extent of this power since this is a policy of our Government to encourage these, that we would expect the Federal Power Commission to see to it that they are not discriminated against in terms of their needs which, I think, is what the Senator is trying to get at.

Mr. DURKIN. I would have no objection to it, and I would be happy to accept the suggestion of the Senator

I ask unanimous consent that the amendment at the desk be modified in accordance with the suggestion of the Senator from New Mexico.

The PRESIDING OFFICER. The Senator has a right to modify his amendment, and it is so modified.

Will the Senator send his modification to the desk. The Chair is informed that the previous modification by the Senator from New Hampshire has not been received at the desk either.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, as I understand the modifications now made by the distinguished Senator from New Hampshire, he has limited the amount of the loan guarantee to 90 percent of the loan; in other words, the guarantee would extend only to 90 percent of the amount actually loaned and the amount guaranteed can be only 75 percent of the project. So in other words, you have 90 percent of the 75 percent. Am I correct on that?

Mr. DURKIN. The Senator is correct.

Mr. JOHNSTON. As I also understand it, the Senator has reduced the total amount authorized to be guaranteed from $300 million total to $100 million total, that $100 million being available during the next fiscal year or until fully used and this act will be available for such additional amounts as Congress may authorize. Am I correct?

Mr. DURKIN. The Senator is correct.

Mr. JOHNSTON addressed the Chair.

Mr. DURKIN. Mr. President, will the Senator yield 1 second?

Mr. JOHNSTON. Yes.

Mr. DURKIN. I ask unanimous consent to add Senator HART of Colorado as a cosponsor to the amendment that has been modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, if the Senator will yield for a further question before we complete this, is the third modification the one I requested that paragraph (p) on page 11 is stricken now from the modified amendment?

Mr. DURKIN. The Senator is correct.

Mr. DOMENICI. I thank the Senator.

Mr. DURKIN. I thank the Senator.

Mr. JOHNSTON. Mr. President, with these modifications we are constrained to accept this amendment and take it to conference. The House of Representatives goes a good deal further than this. Our hesitation has nothing to do with our enthusiasm for low-head hydro. We very much support that, particularly where there are existing dams and the principal amount of the investment has already been made.

A guarantee could not be made in the first place unless it appeared to the commission that it was going to be a financially feasible proposition providing substantial outlook for full repayment.

So we congratulate the Senator from New Hampshire. We think this may be a very, very significant step in energy conservation.

I am prepared to yield back the remainder of my time.

Mr. DURKIN. I thank both floor managers. I appreciate their help, and I think it is a better amendment as a result.

Mr. DOMENICI. The minority is willing to accept the amendment on the conditions stated by the floor manager, and I have no objection.

Mr. GRIFFIN. Mr. President, I support the objective of this amendment by the Senator from New Hampshire (Mr. DURKIN) to encourage the development of small hydroelectric projects in connection with existing dams which are not currently being used to produce electricity.

As David E. Lilienthal, former chairman of TVA and the AEC observed in a recent issue of Smithsonian magazine:

> This is a resource very substantial in volume, for more than half of it is still to be developed; it renews itself, unlike oil and coal and uranium; and its cost will not rise as the years roll on. It provides a form of energy which does not pollute the air, and need not make a violent impact on the environment; it is widely, though not uniformly, distributed throughout America, and is often available right where it is required.

Because development of hydroelectric plants at existing dams should be stimulated, I introduced an amendment (No. 1396) which in many respects, is similar to the amendment of the Senator from New Hampshire. However, my amendment would provide direct loans and grants rather than loan guarantees, the Durkin approach.

To be sure, the grants envisaged by my amendment would cost the Government more money. But the $50 million per year in grants and loans which my amendment would authorize is relatively a small amount compared, for example, with the nearly $8 billion that President Carter seeks to raise with his crude oil equalization tax.

I would prefer the direct grant approach because I know it would provide greater incentives. Furthermore, that is the approach taken by the House passed bill.

However, I recognize the handwriting on the wall. At this stage, I realize the Durkin amendment is preferred by those who are handling this bill for the committee.

Under the circumstances, I will support the Durkin amendment. It is a step forward, and its adoption should assure that some kind of a provision to encourage small hydroelectric projects will survive in the Senate-House conference agreement.

Frankly, I hope our Senate conferees will look closely at the House approach, and will be persuaded to provide some grant money for this very worthy purpose, particularly in situations where guaranteed loans would be of little or no assistance.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to, as follows:

On page 16, between lines 17 and 18 insert the following:

LOAN GUARANTEES

SEC. 15. (a) The Congress declares that, because of the increasing shortages of natural gas and petroleum, and the urgent need to develop environmentally acceptable sources of electric energy to meet the needs of the Nation, the public interest requires the rapid development of the hydroelectric potential of the numerous existing dams on the Nation's waterways which are not being used to generate electric power where such development is technologically feasible, economically beneficial, and not environmentally harmful.

(b) The Secretary of Energy (hereinafter referred to as the "Secretary") shall establish a program to encourage municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and other persons to undertake the development of small hydroelectric projects in connection with existing dams which are not being used to generate electric power.

(c) The Federal Energy Regulatory Commission (hereinafter referred to as the "Commission") shall establish a program to use simple and expeditious licensing procedures under the Federal Power Act for such projects in connection with such existing dams in such manner as the Commission deems appropriate, consistent with the applicable provisions of law.

(d)(1) The Secretary is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this section) as he deems appropriate, the payment of interest on and the principal balance of bonds, debentures, notes, and other obligations issued by, or on behalf of any municipality, electric cooperative, industrial development agency, non-profit organization, or other person to finance not to exceed 75 per centum of the project costs of any small hydroelectric project which he finds—

(A) will be constructed in connection with any existing dam,

(B) has received all necessary licenses and other required Federal, State, and local approvals,

(C) will provide useful information as to the technical and economic feasibility of—

(i) the generation of electric energy by such projects, and

(ii) the use of energy produced by such projects,

(D) will have no significant adverse environmental effects, including effects on fish and wildlife, on recreational use of water, and on stream flow, and

(E) will not have a significant adverse effect on any other use of the water used by such product.

(2) An applicant for financial assistance under this section shall provide information to the Secretary in such form and with such content as the Secretary deems necessary.

(3) Prior to issuing any guarantee under this section, the Secretary shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

"(5) Any loan guarantee under this Subsection shall be increased to up to 90 per cent on any project under which the Secretary of the Army, acting through the Chief of Engineers, has provided the technical assistance under the terms of Section 14 (c) of this Act.

(e) The Secretary, with due regard for the need for completion, shall guarantee or make a commitment to guarantee any obligation under this section only if—

(1) the Secretary is satisfied that the financial assistance applied for is necessary to encourage financial participation;

(2) the amount guaranteed to any borrower at any time does not exceed an amount equal to 75 per centum of the project cost as estimated at the time the guarantee is issued;

(3) the Secretary has determined that there will be a continued reasonable assurance of full repayment;

(4) the maximum maturity of the obligation is not more than 35 years;

(5) the Secretary has determined that, in the case of any facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location; and

(6) the obligation provides for the orderly retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments and reserves as may be reasonably required by the Secretary. Prior to approving any repayment schedule the Secretary may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefor shall be required to be made in equal payments payable at equal intervals.

(f)(1) Obligations guaranteed under this section, may at the option of an issuer which is a municipality or industrial agency, be subject to Federal taxation as provided in paragraph (2). In the event the taxable obligations are issued and guaranteed, the Secretary is authorized to make and to contract to make, to the extent provided in an appropriation Act, grants to or on behalf of the issuer to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the issuer. There are authorized to be appropriated such sums as may be necessary to make grants under this paragraph.

(2) With respect to any obligation issued by a municipality or industrial development agency which such municipality or industrial development agency has elected to issue as a taxable obligation pursuant to paragraph (1), the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954.

(g) Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligations, except as to fraud or material misrepresentation on the part of the holder.

(h)(1) If there is a default by the borrower, as defined in regulations promulgated by the Secretary and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Secretary. Within such period as may be specified in the guarantee or related agreements, the Secretary shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Secretary.

(2) If the Secretary makes a payment under paragraph (1) of this subsection, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act (40 U.S.C. 488), or any other law, or to permit the borrower, pursuant to an agreement with the Secretary to continue to pursue the purposes of the facility if the Secretary determines that this is in the public interest. The rights of the Secretary with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

(3) In the event of a default on any guarantee under this section, the Secretary shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (i) from such assets of the defaulting borrower as are associated with the project, or from any other security included in the terms of the guarantee.

(4) For purposes of this section, patents and technology resulting from the project, shall be treated as assets of such project. The guarantee agreement shall include such detailed terms and conditions as the Secretary deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to the Secretary to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the project shall be available to the United States and its designees on equitable terms, including due consideration to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in the United States under this Act, shall not be treated as assets of such project for disposal purposes under this subsection, unless the Secretary determines in writing that it is in the best interests of the United States to do so.

(i) With respect to any obligation guaranteed under this section, the Secretary is authorized to enter into a contract to pay, and to pay, holders of the obligations, for and on behalf of the borrowers, from the fund established by this section, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Secretary finds that—

(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such project; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

(2) the amount of such payment which the Secretary is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(3) the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which are satisfactory to the Secretary.

(j) Regulations required by this section shall be issued within one hundred and eighty days after enactment of this section and any amendments thereto shall be issued in accordance with section 553 of title 5, United States Code.

(k)(1) The Secretary shall charge and collect fees for guarantees of obligations authorized by subsection (d)(1), in amounts which (A) are sufficient in the judgment of the Secretary to cover the applicable administrative costs, and (B) reflect the percentage of projects costs guaranteed. In no event shall the fee be more than 1 per centum per annum of the outstanding indebtedness covered by the guarantee.

(2) All guarantee fees received by the Secretary shall be paid into the fund established under subsection (1) which shall be available for the payment of any claims pursuant to a guarantee made under this section.

(l) (1) There is hereby created within the Treasury a separate fund (hereafter in this section called the "fund") which shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by this section.

(2) There are hereby authorized to be appropriated to the fund for administrative expenses from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Secretary as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund.

(3) All payments on obligations, appropriate expenses (including reimbursements to other Government accounts), and repayments pursuant to operations of the Secretary under this section shall be paid from the fund subject to appropriations. If at any time the Secretary determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

(4) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities as authorized by this section, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the

Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

(m)(1) The guarantees or commitments to guarantee under this section shall not exceed an aggregate outstanding liability of $100,000,000 beginning in fiscal year 1978 and such further increments as may be authorized by Congress in subsequent Acts.

(2) No guarantee or commitment to guarantee may be made after September 30, 1981.

(n) The Commission shall encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

(o) In issuing licenses for small hydroelectric power projects under the Federal Power Act, the Commission shall encourage joint participation, to the extent permitted by law, by those eligible to receive grants or loans under this section.

(p) Every licensee of a small hydroelectric power project licensed pursuant to the Federal Power Act shall furnish the Commission with such information as the Commission may require regarding equipment and services proposed to be used in the design, construction, and operation of such projects and the Commission shall have the right to forbid the use in such project of any such equipment or services it finds inappropriate for such project by reason of cost, performance, or failure to carry out the purposes of this section. The Commission may make public information it obtains under this subsection, other than information which may not be released pursuant to section 1905 of title 18, United States Code.

(q) Before issuing any license under the Federal Power Act for the construction or operation of any small hydroelectric power project (whether or not in connection with an existing dam) the Commission—

(1) shall assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structure), and

(2) shall consult with the Council on Environmental Quality, the Environmental Protection Agency, and the Department of Interior with respect to the environmenal effects of such project.

Nothing in this subsection shall be deemed to exempt such project from any requirement applicable to any such project under the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal law.

(r) Nothing in this section authorizes the guarantee of a loan or simple and expeditious licensing for construction of any new dam or other impoundment.

(s) For purposes of this section and section 14, the term—

(1) "small hydroelectric power project" means any project of not more than twenty thousand horsepower (or fifteen thousand kilowatts) of installed capacity;

(2) "electric cooperative" means any cooperative association eligible to receive loans under section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "industrial development agency" means any agency which is permitted to issue obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954;

(4) "project costs" means the cost of all facilities and services used in the design and construction of a project, including the cost of any feasibility studies;

(5) "utility" means any person engaged in transmission, or distribution, or both, of electric energy for profit;

(6) "nonprofit organization" means any organization described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954 and exempt from tax under section 501 (a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization); and

(7) "existing dam" means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement (other than repairs or reconstruction) of impoundment structures in connection with the installation of any small hydroelectric power project.

On page 16, line 19, strike out "Sec. 15." and insert in lieu thereof "Sec. 16.".

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER THAT H.R. 7769 BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 7769, which has come over from the House of Representatives, be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

The Senate continued with the consideration of S. 2114.

UP AMENDMENT 868

(Purpose: To preserve competition)

Mr. KENNEDY. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an unprinted amendment numbered 868.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4 following line 9, insert the following and renumber succeeding sections:

PRESERVATION OF COMPETITION

SEC. 5. (a) General Authority of Commission.—Section 205 of the Federal Power Act is amended by adding at the end thereof the following:

"(k) Whenever the Commission determines on its own initiative or upon complaint, after affording an opportunity for evidentiary hearing, that an electric utility is engaging in any unfair method of competition, or that an electric utility has filed any contract, agreement, tariff, or method of competition, it shall issue an order prohibiting any such unfair method of competition, or reject such a filing.".

(b) New Bulk Power Facilities.—Section 202 of such Act is amended by adding at the end thereof the following new subsection:

"(h)(1) If any bulk power facility is proposed to be constructed in any regional district, any electric utility may apply to the Commission for an order under paragraph (3) if such utility is engaged in the generation, transmission, or sale of electric energy within the regional district in which such facility is proposed to be constructed. This subsection shall not apply to a utilization or production facility required to be licensed under section 103 of the Atomic Energy Act of 1954.

"(2) Whenever an application is received under paragraph (1), it shall be transmitted to the Attorney General, who shall, within a reasonable period of time (but not to exceed 180 days), advise the Commission as to whether (absent an order under this subsection) the ownership or use of such facility would create or maintain a situation inconsistent with the antitrust laws.

"(3) If the Commission, after giving consideration to the advice of the Attorney General and after public notice and an opportunity for hearing, determines that such ownership or use would create or maintain a situation inconsistent with such laws, the Commission shall issue an order conditioning the construction of such facility on compliance with such requirements as it determines appropriate to prevent or remedy such a situation (including providing for joint ownership of such facility). The Attorney General may participate as a party to any proceeding concerning such application.

"(4) The Commission may prescribe such rules as it determines appropriate to carry out this subsection.".

Mr. KENNEDY. Mr. President, I am sending to the desk an amendment to S. 2114—an amendment which would provide that antitrust considerations be kept in mind by the Federal Energy Regulatory Commission in its regulation of the electric utility industry.

Part of this amendment is substantially similar to a portion of the Electric Utility Coordination Act which was favorably reported a year ago by the Senate Commerce Committee. It is also modeled on provisions in the House bill but which were not carried forward when the House finally passed that bill. It had solid administration support in the House, and should clearly be included in the Senate version.

Basically, my amendment would do two things. First, it would require the Commission to examine contracts, tariffs, and other materials at the time of filing for provisions which might result in unfair competition. Where these offending pro-

visions are found, the Commission would hold an evidentiary hearing. If it then finds that unfair competition would result, the Commission may issue an order prohibiting the unfair competition or it may reject the filing completely.

The type of unfair practices I have in mind can be illustrated by taking an example of a group of utilities joining to form a power pool under conditions which would deny access to pool power on equitable terms to other smaller, municipal, and private utilities.

In other cases, large utilities have insisted on exclusive wholesale supply contracts with retail distribution utilities lacking their own generating facilities—saying in effect, that "if you want to get any of your power from us, you have to get all of it from us."

Other examples of unfair conditions can be found in the Antitrust Subcommittee's 1970 hearings on "Competitive Aspects of the Energy Industry."

In the past, the Federal Power Commission has been reluctant to exert any antitrust oversight, even when courts have on occasion said the agency should. With this amendment, the newly constituted Commission is presented with a clear congressional mandate to regulate in a way that preserves as much competition as possible. This amendment clarifies and emphasizes that mandate.

The second provision establishes procedures by which, under certain conditions, there may be antitrust review by the Department of Justice of proposed plans for the construction of nonnuclear bulk power generating facilities. As to this section, I would like to make two things clear right at the outset:

First. The review procedure would not be automatic in the case of nonnuclear facilities—as it is for nuclear facilities. It cannot be arbitrarily invoked by the Commission, the Department of Justice, or any other Federal agency.

Second. Where antitrust review does take place, the Attorney General's opinion to the Commission is advisory only. The Commission must take this opinion under consideration in arriving at its own decision—but, the antitrust opinion is never in any sense a veto of the proposal.

I emphasize these points because of misinterpretations of this provision among some Members.

To understand how it would work, let us assume that a large utility is going to construct a new bulk generating plant in a regional district. There are also smaller independent utilities in the area, some of which may have limited generating capacity and others which may be simply retail distributors of wholesale power.

Clearly, the extent to which the new bulk plant will meet growth requirements of the whole district, the willingness of the builder to permit participation by other utilities in the district, the conditions under which wholesale power might be sold from the new plant—these are all matters of enormous competitive consequence to the whole regional district.

Under the amendment I am offering, any of these other affected utilities in the district—not the Commission itself or the Department of Justice—would have the right to apply for an FERC order which would establish certain competitive standards under which the bulk facility could operate.

The application would be forwarded to the Attorney General for antitrust review and advice. The antitrust opinion would have to be given 180 days, as it is under the nuclear plant regulatory legislation. While this opinion would have to be considered by FERC, it would not be binding upon FERC.

FERC would then hold an evidentiary hearing, at which other utilities who might be affected by the proposed bulk facility could testify. If this testimony and the Attorney General's opinion persuade FERC—but only if this is the case—FERC is empowered to issue an order outlining competitive conditions which must be met by the new plan: sales of power to other utilities, and so forth. It could not, and would not, delay plant construction.

This provision was stricken from the House bill during floor debate. The reasons used were that a similar provision in the 1970 amendment of the Atomic Energy Act has caused horrendous delays in the construction of nuclear plants, and extension to nonnuclear facilities would cause similar delays in coal and oil-fired plants.

The allegations of extreme delays from antitrust review procedures with respect to nuclear plants are completely unfounded. Since the amendment was passed in December 1970, the Antitrust Division has reviewed 88 nuclear plant applications. There were no problems with the vast majority of these. In only 18 instances has the Attorney General recommended hearings on competitive aspects of the applications. Many of these are resolved without hearings; for example, Duke Power, involved in 3 of the 18 hearing recommendations, accepted NRC conditions before hearings. At this point three full hearings have been held, one very limited hearing, and one more full hearing is in progress.

We need this amendment because, even though they may have the power, regulatory agencies are notoriously reluctant to assume any procompetitive responsibilities. The December 1970 amendment to the Atomic Energy Act is a case in point. The original act had provided for antitrust review of commercial reactor projects. The distinguished Senator from Vermont, George Aiken, appeared before the Senate Antitrust Subcommittee in May 1970 to explain why the amendment he supported was necessary: The AEC was deliberately ignoring the basic act.

At the time Senator Aiken testified, there were 16 nuclear powerplants in operation, 48 more under construction, another 34 for which reactors had been ordered, and still 8 more in preliminary planning. They had to be commercially feasible, according to Senator Aiken, for the SEC to approve financing. Beyond this, the ones in operation were supplying commercial power and were in the utility rate bases. Yet, Senator Aiken told us:

It is shocking to learn that every plant in operation or under construction today has been licensed under the medical therapy section of the Atomic Energy Act as a research project.

It took another act of Congress to directly order the AEC to provide for antitrust review.

Similarly, the Federal Power Commission has been reluctant to consider competitive policies of any kind. The excuse was always that antitrust considerations were not in the agency's jurisdiction, or at least its expertise. Despite court decisions to the contrary in Otter Tail and several other cases, the FPC has all too often avoided any responsibility for structuring its orders to enhance rather than suppress competition. This amendment is essential to remedy that attitude—to inform the present commission that Congress takes a serious view of this matter.

As I mentioned earlier, just last October the Senate Commerce Committee reported out the electric utility coordination bill, S. 3311, with a provision relating to unfair methods of competition which appeared to be even stronger than the first part of my amendment. The Commerce bill had other sections designed to preserve competitive rights in interconnections, wheeling, and other interutility relationships.

The second part, preconstruction review of operating plans for nonnuclear bulk generating facilities, is similar in some respects to what Congress has already voted for the nuclear industry. The Department of Justice is firmly on the Record in support of the provisions in this amendment.

It seems to me that if we are really talking about public utility regulatory reform, we should show our faith in free, competitive enterprise by adopting my amendment.

Mr. MATSUNAGA. Will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MATSUNAGA. What is it that the amendment would prevent utilities from doing?

Mr. KENNEDY. There are a number of instances of potential anticompetitive acts which have been revealed in this industry in the past. For example, a contract requiring utility B to buy all its power from utility A or none at all; second, a contract in which utility A requires B not to sell to a third utility; and, a similar requirement not to sell to other utilities unless they grant concessions in their territorial areas. There have been these practices which have been evidenced in the past with which this attempts to deal. I think this would maximize the opportunities for actually increasing energy through promoting competitive access to bulk power.

Mr. MATSUNAGA. So the Anitrust Division will have 10 days to review each case?

Mr. KENNEDY. 180 days to make a comment on it, but it would not be empowered to halt construction. All it would be empowered to do is to review the agreements and contracts and to insure that they are not anticompetitive. The legislation itself provides that in a general way. This is somewhat more specific.

The legislation before us says that it authorizes nothing violative of the antitrust laws, but this makes it more specific in a way which I think has proven successful with the other regulatory agencies.

Mr. MATSUNAGA. I thank the Senator from Massachusetts.

Mr. DOMENICI. Mr. President, I have discussed the amendment briefly with the Senator from Massachusetts. I will have to object. I have talked with some members of the minority. This matter was not before the committee although it was reported by the Commerce Committee in the House. It was stricken on the floor of the House.

While the Senator from Massachusetts makes the point that a similar process has been used in the Nuclear Regulatory Commission, that is, to hold up construction while this kind of investigation occurs, I think there are some substantial differences.

First of all, the Nuclear Regulatory Commission has taken so long to approve nuclear powerplants that it probably does no harm to anyone to waste another 6 or 8 months, or at least to take that much time, whereas such has not been the case in this situation because the Federal Power Commission has not even had jurisdiction heretofore over the construction of nonnuclear new bulk sources.

While this might be a good amendment, it appears to me that we are asking for additional jurisdiction to be vested in the Federal Power Commission when most of the complaints we are getting are about the excessive delays which are occurring now.

I regret to have to object, but because many of the Members on my side have concerns, I will have to do that.

I say to the Senator from Massachusetts I believe the amendment is subject to a point of order under the time agreement. I do not want to raise the point of order until we are through discussing it. I would have to raise it based upon some of the Members on this side instructing me that they do not want to accept the amendment.

Mr. KENNEDY. Mr. President, if I understand correctly, there is an antitrust provision on page 4. It refers to the antitrust laws in section 4. The original bill contained similar provisions as the amendment I offer today.

Of course, the amendment is on the list of the amendments which the committee circularized. I was hoping that we would take this to conference and consider it in the conference.

Mr. DOMENICI. Mr. President, I want to say again to the Senator from Massachusetts when an amendment such as this comes along, I have to do my best to try and clear it or not clear it. In this instance, I cannot clear it.

Therefore, Mr. President, I will make the point of order that this amendment is not in order under the time agreement.

The PRESIDING OFFICER. The point of order is not in order until all time has either been yielded back or used up.

Mr. JOHNSTON. Mr. President, speaking for the committee, we are inclined to accept this amendment and take it to conference, notwithstanding some concern about delay and about the far-reaching nature of the remedies given to the Commission, such as ordering joint ownership of the facilities. Notwithstanding those concerns, we are prepared to accept this and take it to conference, with the understanding, of course, that we shall have to consider very carefully such evidence as we can determine between now and then, assuming that it survives the scrutiny of the point of order. On that basis, Mr. President, we are prepared to accept the amendment.

Does the Senator from Alabama wish time?

Mr. ALLEN. Yes, at the proper time, I want to join in the point of order the distinguished Senator from New Mexico has made. I wish to ask a question of the Chair.

Assuming that all time on the amendment is yielded back and a point of order is made, if the point of order is not sustained, would the amendment then be open to amendment in the second degree?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that it would be.

Mr. ALLEN. I thank the Chair.

I assume that the distinguished Senator from New Mexico will make the point of order after all time has been yielded back.

Mr. JOHNSTON. Mr. President, I am prepared to yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time. I appreciate the indication by the floor manager of his acceptance.

Mr. DOMENICI. Mr. President, I make the point of order that I made just a few moments ago, that the amendment is not germane and, under the present unanimous-consent agreement, it must be germane.

The PRESIDING OFFICER. The Parliamentarian informs the Chair that the bill deals with antitrust matters in a certain portion of the act, appearing on page 4. For that reason, I therefore indicate that the amendment is, in fact, germane.

Mr. DOMENICI. May I make further inquiry of the Chair?

Is the Chair referring to section 4 of the bill that says nothing in the act shall affect the applicability of the antitrust laws?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. And on that basis, the point of order is deemed not well taken?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield so I may take a couple of minutes at this point, without losing his right to the floor?

Mr. ALLEN. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, will the manager of the bill let me have 2 minutes?

Mr. WEICKER. Yes; I yield 2 minutes.

ANNOUNCEMENT OF APPOINTMENT OF AD HOC COMMITTEE ON RULE XXII

Mr. ROBERT C. BYRD. Mr. President, I am, today, appointing an ad hoc committee of Democratic Senators to study rule XXII in an effort to develop proposed changes to that rule to expedite the consideration and disposition of a measure once cloture has been invoked.

For the information of the Senate, I want to emphasize that this committee, composed of Senators NELSON, NUNN, MOYNIHAN, and the majority whip (Mr. CRANSTON), ex officio, will be requested to concentrate their study and recommendations solely on postcloture procedures in view of the difficulties encountered by the Senate on the Natural Gas Pricing Act, and the "filibuster by amendment" after cloture had been invoked.

During consideration of that bill, it may interest the Senate to note, before cloture was invoked, the Senate spent 6 days—including a Saturday—32 hours and 39 minutes in deliberation on that measure, conducting 5 live quorum calls and 18 record votes. After cloture was invoked, the Senate spent 3 days and 1 night, including a Saturday—94 hours and 27 minutes—with 35 live quorum calls and 114 record votes, before the bill was finally passed.

I believe these figures starkly illustrate the necessity of careful study of rule XXII to expedite final Senate consideration of a measure once cloture has been invoked.

The leadership is not unaware of the criticism which has resulted from the attempt by the leadership to establish precedents to expedite the Senate's business once cloture has been invoked. While that is not the primary reason for the appointment of this ad hoc committee to make recommendations to the Senate with respect to postcloture rule changes, it nevertheless makes clear that a way must be found for the Senate to have an opportunity, in a calm and deliberate atmosphere, to consider the course it wishes to take with respect to this issue.

I hope this appointment of the committee will meet with the approval of the Senate and that all Senators will provide the committee with comments, suggestions, and recommendations.

Mr. BAKER. Mr. President, would the Senator yield to me for a moment?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. Mr. President, as I announced on the floor recently, I, too, have appointed an ad hoc committee to consider and make recommendations for changes to rule XXII. At that time, I believe I announced the appointment of Senator MCCLURE, Senator MATHIAS

and Senator CHAFEE. I would like to add to that the distinguished minority whip (Mr. STEVENS) as an ex officio member of the committee.

It is my understanding our committee has already begun to solicit views and suggestions. I would hope that as matters progress a little further, in the balance of time here this year, the two committees might get together and compare notes so that when we arrive at the time when possible changes to rule XXII are to be undertaken, we could at least explore the possibility of finding common ground.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

I say to the distinguished minority leader that I have instructed the members of the ad hoc committee on my side of the aisle to work with the ad hoc committee that was appointed by the distinguished minority leader so that we could have broad based, bipartisan support in this event.

Mr. BAKER. I thank the majority leader.

Mr. MORGAN. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. MORGAN. I wonder if the distinguished majority leader would be willing to ask the Parliamentarian to make a compilation of the rulings that were made during the debate this week, with regard to the precedents they may set for the future, and also a record as to whether or not there was precedent on these particular points before.

I think there were some that will have far-reaching effect and I think, in all fairness, we in the Senate ought to know what it is, or what they really were, and what the precedent for them will be.

Mr. ROBERT C. BYRD. Yes. I think that is a good suggestion. I am sure the Parliamentarians would do that in the normal course of things. But I certainly support the distinguished Senator from North Carolina in urging that the Parliamentarians proceed with this matter.

Mr. MORGAN. I wonder if the distinguished majority leader would ask the Parliamentarian to disseminate that to the Members of the Senate once he has made a compilation of it.

Mr. ROBERT C. BYRD. I will not do that at this time. I will discuss it with the Parliamentarian and I, personally, would have no objection to it.

But there were a good many precedents set during this debate.

Mr. MORGAN. I would assume as a Member of the Senate I would be entitled to it.

Mr. ROBERT C. BYRD. The Senator would.

Mr. MORGAN. I will ask the Parliamentarian here on the record if he would make such a list and furnish it to me.

Quite frankly, it happened so fast, I could not follow what was going on and I doubt seriously anyone else did.

Mr. ROBERT C. BYRD. Let us put it this way, the Parliamentarian does this in the normal course of things and, of course, it will be available to all Senators at their request.

Mr. MORGAN. Well, I am making a request as a Member of the Senate to the Parliamentarian and I trust he will fulfill my request. If not, I will come back.

Mr. ROBERT C. BYRD. That will be between the Senator from North Carolina and the Parliamentarian.

Mr. MORGAN. If he does not—does the majority leader feel, as a Member of the Senate, I am entitled to this?

Mr. ROBERT C. BYRD. I have not said otherwise.

Mr. MORGAN. I am asking if he does not feel that way.

Mr. ROBERT C. BYRD. If I did, I would say so. As I have indicated, the Parliamentarian does that in the normal course of things. It will be available to all Members, and if the Senator from North Carolina wants the Parliamentarian to provide him with those precedents, I am sure the Parliamentarian would carry out that instruction.

Mr. MORGAN. I thank the Senator.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Alabama for his courtesy.

PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

The Senate continued with the consideration of S. 2114.

Mr. ALLEN. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. INOUYE). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I ask for a division of the amendment. I have a right to call for that.

The PRESIDING OFFICER. How does the Senator suggest that this bill be divided?

Mr. ALLEN. As to each separate item. I would say that section 5(a) is a separate item, and (b), (h)(1) is a separate item, (h)(2) is a separate item, (h)(3) is a separate item, (h)(4) is a separate item.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. KENNEDY. Would the Senator yield for a question?

Mr. ALLEN. Yes.

Mr. KENNEDY. It seems to me it is appropriate to divide the amendment between subsections (a) and (b). The different divisions within (b) are all interrelated.

It seems to me that would be a natural point of separation, and I would think the Senator would be most concerned about these two sections.

I would hope, in regard to (a), we could at least get a voice vote and then rollcall the (b) portion.

I offer that purely as a suggestion.

The PRESIDING OFFICER. The Chair will advise the Senator from Alabama, according to the Parliamentarian, this amendment may be divided in two parts, 5(a) and 5(b).

Mr. ALLEN. I thank the Chair.

Now, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLEN. Mr. President, the Chair has ruled that the amendment is germane, basing its ruling on section 4, on page 4, which says that nothing in the act shall affect the applicability of the antitrust laws as defined by the Energy Policy and Conservation Act.

The amendment does not seek to amend the Energy Policy and Conservation Act, but the Federal Power Act.

I feel that the Parliamentarian hastily advised the Chair in this regard, but I am not seeking to overturn that parliamentary response.

But I would like to make this parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLEN. The amendment having been divided, would not a point of order lie as to each portion of the amendment separately, since separate issues have been brought into play by the amendment, would not a point of order now lie to section 5(a)?

The PRESIDING OFFICER. The Parliamentarian advises the Chair that the point of order was raised against the whole amendment and that divisibility has nothing to do with it. It just applies to acting on the amendment.

Mr. ALLEN. I did not quite understand the Chair's ruling.

The PRESIDING OFFICER. A new point of order will not lie against section 5(a) or section 5(b) just because the amendment is divided into two parts for action.

Mr. ALLEN. Would it not be possible to approve one and not approve the other?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. And would it not, therefore, be possible to approve a nongermane portion of the amendment?

The PRESIDING OFFICER. That is correct. The Senator demanded the division, and he has a right to do so.

Mr. ALLEN. Now we have section 5(a) before the Senate, and the yeas and nays have been ordered.

The PRESIDING OFFICER. On the whole amendment.

Mr. ALLEN. But the yeas and nays that have been ordered would apply to each separate portion of the amendment as divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. Part (a), then, would be amendable in one degree.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. Mr. President, I ask unanimous consent, on behalf of the sponsor of the amendment and on behalf of Senator ALLEN, that the pending amendment be set aside until 3 o'clock this afternoon.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, as I understand, it will be called up then as the pending business. Am I correct?

The PRESIDING OFFICER. According to the unanimous-consent request, yes.

Mr. ALLEN. Mr. President, reserving the right to object, it would come back in exactly the same status that we now leave it. Is that correct?

The PRESIDING OFFICER. At 3 o'clock.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. I thank the Senator from Massachusetts and the Senator from Alabama.

UP AMENDMENT NO. 869

Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) proposes an unprinted amendment numbered 869.

Mr. DURKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, line 23, add an "s" to the end of the word "Report."

On page 8, line 24, add "(a)" after "Sec. 8."

On page 9, line 4, strike "(a)" and insert in its place thereof "(1)".

On page 9, line 8, strike "(b)" and insert in its place thereof "(2)".

On page 9, line 13, strike "(c)" and insert in its place thereof "(3)".

On page 9, line 14, after the word "Act." insert the following new subsections:

(b) The Secretary of Energy is directed to study all major existing non-experimental utility rate reform programs in the United States in regard to time of day, load management, seasonal, and interruptible rates, and rates based on marginal costs. Six reports shall be made to the Congress; the first shall be made eight months after the enactment of his bill; the next five shall occur at intervals of six months.

The reports will address but not be limited to the following subjects:

(1) definition of the rates and a description of the process by which they were derived;

(2) the effectiveness of the rates immediately and over the course of a year in shifting lands from time periods of lower demand;

(3) the potential for additional shifting of loads in time periods of over a year;

(4) the reasonableness of the rates in regard to changes in the amounts of money paid by users;

(5) the effect of such rates on investor confidence in the utility;

(6) the effect of such rates on utility company revenues, including "excess revenues", if any, and the solutions to any revenue problems caused by such rates.

(c) The Secretary of Energy in consultation with the FERC is hereby directed and authorized to undertake two studies, with the participation of the electric power industry and an appropriate public advisory committee, to determine the most cost-effective methods of increasing electric service reliability.

These studies shall be completed within 18 months of the passage of this act. Reports shall be submitted to the Congress and the President.

(1) The first study shall consider the cost effectiveness of investments in each of the systems involved in providing electric service, including but not limited to generation, distribution, and transmission systems, and supplementary, protective, or mitigating measures at the consumer level.

In addition to cost-effectiveness, any other relevant differences (such as environmental differences) between the alternative systems shall be noted.

The study will examine utility systems typical of various types of generating capacity and various regions of the country and typical of various mixes of urban, rural, residential, industrial, commercial, and other customers. The conclusions will state what measures are most cost-effective for decreasing the number and severity of outages for each of these different systems.

In examining distribution and transmission systems, the study shall consider, at a minimum the following means of improving reliability:

Isolating faults by sectionalizing circuits through fuses and manual or automatic switches;

Provision of alternative distribution lines;

Increasing and improving maintenance of distribution networks;

Investment in improved substation equipment and power lines;

Placing power lines underground;

Dispersed generation and storage; and

Increased standardized construction.

In examining whether adding generating capacity is more or less cost-effective than improving reliability in distribution, transmission, and other parts of an electrical power system, this study shall consider the following alternatives to new generating capacity:

New inter-ties between systems;

Increasing capacity of existing inter-ties;

Energy conservation to reduce peak loads;

Power pooling arrangements;

Scheduling maintenance in off-peak periods;

Increasing investment in preventive maintenance;

Installing more reliable equipment to reduce component failure rates;

Improving in emergency operating procedures;

Interruptible loads;

Increasing capacity factors and reliability of existing plants by adding increased personnel, by better training, or by other means.

Load management devices.

The cost-effectiveness of increasing or decreasing the loss of load probability and thereby increasing or decreasing the reserve margin of a utility shall also explicitly be considered.

(2) The second study shall examine the cost effectiveness of increasing reliability by the provision of a number of smaller, decentralized conventional or non-conventional units rather than large units with the same or greater megawatt capacity. This study shall make conclusions regarding the mix of facilities of different sizes that will most cost-effectively improve reliability. This part of the study shall include all relevant cost parameters including the comparative costs of transmission and distribution lines under the different alternatives. Non-cost differences between the alternatives, such as environmental differences, shall also be noted.

Such small units may include but are not limited to medium (generally 100 to 400 megawatts) and small (generally less than 100 megawatts) conventional generators plus:

Wind, solar thermal, and photovoltaic units;

Fluidized bed combustion units;

Hydroelectric production from existing dams not currently producting electricity;

Solid waste combustion units;

Wind power in conjunction with storage facilities; and

Fuel cells.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Mr. Banta and Mr. Sussman have the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Sneeley, of the Judiciary Committee staff, have the privilege of the floor during the consideration of and votes on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is this the Senator's amendment included in the unanimous consent agreement?

Mr. DURKIN. No. Neither this amendment nor the next one I will offer is the amendment on which I have time reserved under the unanimous consent agreement. That amendment deals with synthetic natural gas.

Mr. President, the amendment at the desk is a relatively simple one. It has been discussed on both sides of the aisle, and there is no objection, according to my understanding.

The amendment simply requires the Secretary of Energy to report on existing experimental innovative rates and rate structures. The reports would address issues such as the actual rate structure, how it was derived, how much peak load was shifted, what the affects of these rates are on existing customers, small businessmen and women as well as the larger industrial sector.

The reliability aspect of the amendment asks that a study be done to identify the most cost-effective methods of improving reliability of electrical service. The amendment requires the Secretary to report on the existing innovative structures, such as off-peak load management, time of day pricing, seasonal pricing, interruptible service, and what have you.

For example, there was a movement in the committee and there had been legislation requiring that the Federal Government would mandate some of these innovative procedures. Seasonal pricing, for example, can be very helpful in some areas of the country, but it could increase substantially the cost of agricultural products in other areas of the country because some of the irrigation equipment utilizes electric power as its energy source.

So the committee felt that in many ways we were like the blind man feeling the elephant and not really knowing what we were up against in many of these rating questions and utility questions. That is why the committee position had been that we would not interrupt and not abrogate State law. We would ask the Secretary to intercede in the State public utility commission proceedings to raise these questions in the local context and force that utility commission to consider these innovative ratemaking suggestions in the context of the local situation.

The Secretary, under the committee bill, is empowered to go in and raise those questions in the State-by-State proceedings.

Furthermore, if we ever are going to solve the energy problem, if we ever are going to solve the electricity problem and the rate problem as applied to the interaction with the national energy picture, we need more information.

We do not have enough information, and we do not know what the nationwide impact would be.

As I say, some of these things will be excellent in my neck of the woods, and they may very well cause serious economic dislocation in other areas of the country.

So, Mr. President, if there are no questions, and I understand my friends on the other side of the aisle are willing to accept this amendment——

Mr. BELLMON. Mr. President, will the Senator yield for a question?

Mr. DURKIN. Yes.

Mr. BELLMON. As I understand it, this would require the filing of additional reports; is that right?

Mr. DURKIN. This would require the Secretary of Energy to file the reports, the reports on the existing ongoing experiments, with respect to rate structures in different parts of the country.

This does not directly contemplate that the utility itself will be required to make reports to Congress. This requires the Secretary of Energy.

The committee bill mandates, which is a change, that the Secretary of Energy appear at PUC or utility hearings all across the country to raise the many issues involved in reforming the rate structure. That is a periodic report contemplated there.

This requires him specifically to report on the existing. We tried to get, for example, a report on the experience in Wisconsin and the experience in New York with some of the newer ratemaking procedures, and the Library of Congress was only able to give us a very, very sketchy one, and they had to disclaim it because they said they did not have the time or the energy source.

Mr. BELLMON. Is it the intent of the these reports to move toward the involvement of the Federal Government in the ratesetting function?

Mr. DURKIN. Absolutely not; absolutely not.

Mr. BELLMON. What is the purpose of the report?

Mr. DURKIN. To get more information. I will give the Senator an example. A lot of people think that seasonal pricing is the answer to conserving fantastic amounts of electricity. The House bill mandates that this be a countrywide solution.

Well, I think you will find, and I am sure you are here and on your feet for that reason, that in the Southwest it is my understanding that an awful lot of irrigation equipment is run by electricity. The season is the growing season. If you were to increase the costs you might lower the costs of electricity in some other area, but the price of those agricultural products would be substantially higher when they get to that area.

So it is really just to get some more information as to what can be done, if anything, to streamline the ratemaking procedure.

You have the consumers on one side saying, some of the consumer groups saying, they want a sweeping mandate of Federal change. You have the utilities on the other side, saying, "Don't do anything, We are happy. We are laughing all the way to the bank."

Well, this is just to get some information to find out how much truth there is in the claims of both sides. But in no way, or I would not have introduced it, in no way is it intended nor does the implication lead to Federal intrusion.

I think the Senator from New Mexico fought alongside of me in committee not to get the Federal Government in. There is an amendment coming along later to give the Secretary the right to appeal in State proceedings. I hope the Senator from Oklahoma will be on the floor and join in fighting that measure. This in no way gets the Federal camel into the tent.

Mr. BELLMON. I am at a loss, Mr. President, to know what these reports are for. These States are presently able to consider the problems the Senator mentioned here. Why do we want the Federal authorities to be furnished information, unless we expect the Federal authorities to involve themselves in ratemaking processes? I am at a loss as to what good the reports are unless the Federal Government intends to do something with them.

Mr. DURKIN. One of the problems is the House has already done something. The act that is enacted has mandated some of these things, and it is no longer a question. Many of us on the Energy Committee, the majority by far, felt that that was moving too far, too fast, in an unknown area. In fact, many of the public utility commissions across the country have worn blinders, and it has been a major task to drag them into the 20th century. They refused to change their procedures since the days of the Salem witch trials, and they will not study anything. So I think there is a need for the study. They will not do the study.

This not only provides Congress with the information but it also provides, at least my intent is, pressure on those State commissions to do the job they are supposed to do. But we do not—and in my 5 years as insurance commissioner, we functioned best as insurance commissioners when the Federal Government was looking over our shoulders, much more effectively than had the Federal Government taken over the regulation. I think the situation is the same here.

Mr. DOMENICI. Let me say to the Senator from Oklahoma, I think had he been present and observed, as the good Senator from New Hampshire has indicated, the overwhelming majority of the Energy Committee itself, he would find a great skepticism on that committee as to what the Federal role ought to be with reference to moving ahead with better ratemaking schemes. The committee was pretty unanimous that we did not want the Federal Government doing that.

As we indicated earlier this morning, the bill as it comes to us from the House not only says these new schemes for ratemaking are good but, in a sense, puts the Federal Government in a posture where they may preempt and mandate that some of them occur to the delay of ongoing hearings, to the delay of the existing financing arrangements to get these plants built. I think what the Senator from New Hampshire is saying is that he has heard that some utility commissions have studied these various approaches, various parts of the Government may be studying and looking at parts of it, and I think his amendment is saying in lieu of moving ahead too fast, and since we have only gone a limited way in this bill, we ought to ask that the energy office of the United States do these two studies, put them all in one place so that we will know the effectiveness of State commissions in this area.

We may also find that some of these new approaches are not all that good. I think the Senator is simply saying that. The study might reveal very marginal ratemaking will not do any good.

Mr. DURKIN. Or only work in one area of the country, and then the pressure will be on the utility commissions in those areas, be it New England, the Southwest, or the South, to take that information and use it.

Mr. BELLMON. It seems to me the Senator is making my point exactly. From these reports it appears it is the intent of the author of the amendment to give the Federal authorities sort of a gun they can point at the head of the local regulatory agencies and say, "You either do these things or we, Uncle Sam, will move in and take over for you."

I frankly am not in accord with that kind of operation. It seems to me the States have this authority, and we have not shown that we are much smarter than the States at this level. So I do not know why we want to involve ourselves in something they have been doing ever since the days when utilities were set up in this country.

I frankly do not see why we need the reports unless we do something with them. If it is the intent to arm the Federal Energy Office with a weapon to use against the States, then I am not for the report.

Mr. DURKIN. Let me assure the Senator from Oklahoma that I am wearing two hats here, that of the manager, and that of the sponsor of the amendment. In neither capacity do I have any intention to get the Federal Government into the ratemaking process as far as utilities are concerned. But the fact is the States do not have the money to—a lot of the States, you cannot get a study that will take in an area. You cannot get a study that will take in the country.

For example, now, one of the things the study called for by the Federal Power Commission when the lights went out in New York, the Federal Power Commission found ConEd could have avoided the blackout, but no one knows which was the cost-effective way of avoiding such a blackout.

Mr. MATHIAS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. DURKIN. I would be happy to.

Mr. MATHIAS. Mr. President, I ask unanimous consent that Mr. Joseph diGenova, of my staff, be accorded the privilege of the floor during the debate on this bill and all votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. Mr. President, may I say to my friend from Oklahoma this issue of whether the Federal Government is going to be involved in rates as far as utilities are concerned is going to be here in the Chamber. It is already on the other side and it is going to bounce back and forth across the courtyard for the next several years, I am sure.

I, for one, do not think that a case has been made that the Federal Government should get in. I do not know about the Senator's mail but according to my mail we have some of the highest electric rates in the country and people who fell for those electric heat ads pay more for their electric heat than they do for the mortgage.

Now we are going to say that we are going to put on the same blinders that the State commissions have worn. We are now going to share those blinders with them.

There is absolutely no intent to get the Federal Government into the regulation of utilities other than to the extent they are now through the Federal Power Commission for the wholesale power sales and what have you.

But I think we have an obligation to find out are these things just schemes written by the pilot, the skywriter, or do these things have potential to save energy in Oklahoma, New Hampshire, New Mexico, Ohio, and what have you?

Right now we do not know. We cannot tell our constituents whether we know. Are we going to vote to pull the curtain again and just walk around in blinders?

Mr. BELLMON. I thank the Senator.

Mr. DURKIN. I thank the Senator from Oklahoma.

Mr. President, I am prepared to yield back the remainder of my time. As I say, in my second capacity I am prepared to accept this amendment on behalf of the majority.

Mr. DOMENICI. Mr. President, in behalf of the minority we are prepared to accept the amendment.

Mr. DURKIN. I thank the Senator from New Mexico.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 870

Mr. DURKIN. Mr. President, at this time I call up my second unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN), for himself, Mr. MORGAN, and Mr. NUNN, proposes an unprinted amendment numbered 870.

Mr. DURKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, line 12, insert the following new section:

SEC. The Chairman of the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, is directed to conduct a study of the legal requirements and administrration procedures involved in the consideration and resolution of proposed wholesale electric rate increases under the Federal Power Act for the purposes of (a) providing for expeditious handling of on the record hearings consistent with due process (b) preventing the imposition of successive rate increases before they have been determined by the Commission to be just and reasonable and otherwise lawful, and (c) improving procedures designed to prohibit anticompetitive and/or unreasonable differences in wholesale and retail rates. The Chairman shall report to Congress within five (5) months from the date of enactment of this Act on the results of the study required under this section, on the administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid the purposes of this section.

Mr. DURKIN. Mr. President, I think the Senator from Oklahoma will be very interested in this provision.

It is a study, and it calls for the chairman of the FERC to undertake the study to study ways to shorten the process and resolve all the conflicts with respect to pancaking.

In the House of Representatives the House bill has an antipancaking provision that is very arbitrary. Friends and foes of the pancaking situation and the antipancaking provisions, off the record, both sides will admit that they do not know how to solve the problem and they really are not sure of the extent of the problem.

As one who again comes from a State where we have the highest electric rates in the country, and outside of the issue of the Panama Canal I think my mail runs greatest on the issue of electric rates.

But here is where the House of Representatives has moved, and in all due respect to the House of Representatives, they have moved rather rapidly in uncharted waters.

We looked and tried to find people who could help draft and help us draft an antipancaking amendment which would solve the problem and have it reducible to legislative language. I have to admit at this time we have been unable to find anyone with that wisdom and draftsmanship ability.

For the record, maybe I should talk about pancaking and make sure that everyone realizes it has nothing to do with anything but electric rates. Pancaking is the result of the fact that the Commission takes an average of 3 years to decide contested wholesale rate cases. The rates are in effect pending decision. Many utilities, therefore, have three or four wholesale rate cases pending decision before the FPC at the same time, and then that is the situation which leads to the term "pancaking." The rate requested pancakes one on top of another, and the consumer is paying for them all because they have all gone into effect.

On the average in each one of these cases the rate will be cut back substantially. Wholesale customers of such a utility are, therefore, paying more than they should at any one time because they are paying for three or four rate increases that will be found to a substantial degree as excessive, but quite rarely are there refunds because another rate request comes on top of that, and they always have three or four built up, three or four pancaked. So the refund is never returned to the municipality, the co-op, the public power people, or the investor-owned utilities.

Everyone admits it is a problem but no one knows how to solve it.

Mr. President, at this time I yield to my good friend from Nevada.

VISIT TO THE SENATE BY MEMBERS OF THE HOUSE OF COMMONS OF CANADA

Mr. CANNON. Mr. President, I call to the attention of my colleagues that we have distinguished Representatives here from the House of Commons in Canada, members of the Standing Committee on Management and Members' Services, who are visiting Washington and conferring with the Rules Committee and some of our appropriate staffs on the operation of our business here.

At this time, I ask them to stand, and I shall introduce them.

We have the Honorable Robert Carmen Coates, the Honorable Gérard Duquet, the Honorable John Raymond Ellis, the Honorable Bruce Halliday, the Honorable Leonard Donald Hopkins, the Honorable Joseph Adrien Henri Lambert, the Honorable Marcel Joseph Aimé Lambert, the Honorable Frank William Maine, and Ambassador Peter Towe. [Applause.]

RECESS

Mr. CANNON. Mr. President, I ask unanimous consent that the Senate stand in recess for 5 minutes so that Members might have the opportunity to say hello to our distinguished guests.

There being no objection, the Senate, at 1:39 p.m., recessed until 1:44 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. INOUYE).

PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

The Senate continued with the consideration of S. 2114.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. DURKIN. I yield.

Mr. DOMENICI. I ask unanimous consent that an amendment to be offered by the Senator from Delaware (Mr. ROTH) be in order, and that he be permitted to have 1 hour on that amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DURKIN. Mr. President, reserving the right to object——

Mr. DOMENICI. I suggest the absence of a quorum.

Mr. DURKIN. Will the Senator withhold that?

The PRESIDING OFFICER. Does the Senator from New Mexico withdraw his suggestion of the absence of a quorum?

The clerk will call the roll.

Mr. DURKIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. I do not think we have any objection.

Mr. DOMENICI. I renew my unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New Mexico? Without objection, it is so ordered.

Mr. FORD. Mr. President, does the Senator from New Hampshire have an amendment up?

Mr. DURKIN. I have an amendment pending.

Mr. FORD. I beg the Senator's pardon.

Mr. DURKIN. Mr. President, picking up where we left off, I think everyone realizes that pancaking, that has caused the problem, is the price-squeezing effect where the wholesale customer of a utility pays more for electricity than does the retail customer. There are a lot of utility companies being sued because of the price squeeze, all tracing back to pancaking.

The House just said that all decisions have to be made in 12 months. That sounds good, but some decisions cannot be made in 12 months. That goes to the heart of the problem. That is why we are asking for the study, so that we can act, hopefully, in the near future, on the basis of sound information, rather than conjecture.

That, in effect, is the problem, and that is the case for the study amendment. I understand that my friends across the aisle are willing to accept it, and, as the committee is willing to accept it, if there is no further discussion, I am happy to yield back the remainder of my time.

Mr. DOMENICI. Mr. President, in behalf of the minority, we will accept the amendment. As the distinguished Senator from New Hampshire indicates, whether one is staunchly opposed to pancaking, or even if one might think it has some place in the utility ratemaking system, the point here is that by accepting this amendment we are not prejudicing their view, nor are we saying that the ratemaking commissions in the United States, as a mandate from Congress, have to rid themselves of this kind of episode within a given period of time.

We say we do not know enough about it, but this study should give us enough information as to what the role of the Federal Government should be, if any, and should be informative for the various State commissions as to the impact of this kind of situation. So we have no objection to the amendment.

Mr. DURKIN. I thank the Senator from New Mexico.

Mr. NUNN. Mr. President, I want to commend my distinguished colleague from New Hampshire for his leadership in bringing the very serious matter of what is popularly referred to as "pancaking" to the attention of the Senate with his amendment. I believe that it is a subject which is very important to any overall consideration of problems facing public utility systems, and I congratulate Senator DURKIN for his initiative in providing the Senate with an opportunity to go on record regarding this problem.

For some time now, I have been very disturbed with the question of electric power rate increases, particularly as they affect those consumers on fixed incomes. This problem has been compounded by the inordinately long delays by the then-Federal Power Commission in reaching final decisions on such increases that are filed with them. The resulting pancaking of rate increases must not continue. The Commission's inability to reach a solution to this problem continues to create undue burdens on both our Nation's consumers and on the efficient operation of public utilities which must be corrected.

In an effort to reflect my concerns, I cosponsored two measures in the 94th Congress, S. 3311 and S. 3483, which would have, in part, required that the Commission complete action on a schedule which seeks a rate or charge increase before any new schedules could go into effect. I also wrote to Senator MAGNUSON, as chairman of the Commerce Committee which had jurisdiction over these measures, indicating that, while I realized that the measures represented only one possible approach to the problem, I was hopeful that the committee would give this problem their most careful study, and provide a legislative approach that would be both effective in preventing delays, and the most equitable for all parties concerned.

Mr. President, I do not believe any of us who are familiar with the pancaking problem pretend that there is an easy solution. There are serious equities which must be balanced, and any response to the difficulties must be fair to all parties, and not give an advantage to either.

However, I do not believe that, simply because a problem is complex, and a solution is difficult, the Senate should avoid coming to grips with it. We cannot allow the present situation to continue.

We cannot continue to allow the situation whereby wholesale suppliers collect funds which are subject to refund and, therefore, cannot be used as a basis for equity or debt financing. Nor can we continue to allow wholesale purchasers to continue to be involuntary creditors of their suppliers by having to pay increased rates before they have been found to be "just and reasonable," thereby depriving these purchasers of capital which they could use for other necessary uses.

If we do not face up to the problem of pancaking, pricing situations will continue to exist whereby the wholesale rate is higher than the suppliers' retail rate, and yet both are paid for comparable service.

I am hopeful, therefore, that at the very least, we can require a careful study of this situation to be conducted by the new Department of Energy. Senator DURKIN's amendment would provide for this. The House has already attempted to address this problem in their energy bill. I think the Senate should take to conference a strong indication of our willingness to seek equitable remedies to a problem which has been with us for quite some time, which is causing hardships for the consumers of our Nation, and which must be solved.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 871

(Purpose: End-user gas, purchase and transmission)

Mr. FORD. Mr. President, I call up my unprinted amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. FORD) proposes an unprinted amendment numbered 871.

Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert the following new section at the appropriate place:

"SEC. . (a) The Commission's present policies encouraging the transportation of natural gas owned by an ultimate consumer shall continue in full force and effect subject to terms and conditions the Commission deems appropriate to further these policies: Provided, however, That where the Commission approves the transportation of gas from reserves owned by an ultimate consumer, such transportation may be for a period of not less than the life of the reserves, or shorter period as provided by contract between the consumer and the transporter.

(b) Notwithstanding any other provision of law, nothing shall be deemed to preclude the sale and transportation of natural gas purchased by an end-user at a price in excess of any price established by law where it is established to the satisfaction of the Commission that—

(1) approval of the transaction is consistent with the public convenience and necessity; and

(2) such gas will be consumed by the purchaser solely for high-priority needs as defined by the Commission.".

Mr. FORD. Mr. President, I shall not take very long. I believe this amendment is cleared on both sides. It is called an end-user amendment.

Simply stated, what it does is give an industry an opportunity to buy natural gas under contract with the transmission line, have it transported to his distribution system, and then it will go to that end-user, provided, however, that other higher priorities do not need it, for example, home heating. If it is needed in that area, then the end-user will let it go into the system; otherwise it goes to him.

Last winter in my State, many of the industries, at least one in particular, were able to salvage some 20,000 jobs for people who were not put out of work. So

this is not only a usable concept, but it has been put to work for the benefit of people in various areas.

This is an extension of section 533 of the present law. It extends only that section, not the rest. I believe it is an important amendment, not only for the industry but for the workingman.

I have found support on both sides of the question from management and from labor.

I would be very hopeful that the floor managers of the bill would accept the amendment and we can have it agreed to by a voice vote.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I would say to the distinguished Senator from Kentucky from the standpoint of this Senator, I have no objection. If the Senator does not mind, I will ask for a brief quorum call to consult with a few of the members of the committee on my side.

As I understand it, this merely indicates that the existing Federal Power Commission order, which I am told is commonly known as Order 533, basically has allowed this situation under its present powers and jurisdiction. What the Senator is saying is that since we are in the process of going through changes in the natural gas law, the Senator is merely reiterating that that is encouraged, and the Senator is saying that it was good and it should continue good and beneficial under any policy we adopt.

Mr. FORD. That is correct. The Senator has said it much better than I can. I appreciate his stating it.

Mr. DOMENICI. Having said that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I have conferred with the committee members on my side and have been informed that this amendment is acceptable. We have no objection to it.

Mr. JOHNSTON. Mr. President, on behalf of the committee we accept this amendment. We think it is a proper amendment to get natural gas where it is needed with no harm to the consumer. Therefore, we accept it with congratulations to the great Senator from Kentucky.

Mr. FORD. I yield back the remainder of my time, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table, Mr. President.

The motion to lay on the table was agreed to.

Mr. DURKIN. Is it in order for me to call up my amendment now?

Mr. JOHNSTON. I would say it would be in order.

AMENDMENT NO. 872

(Purpose: Eliminate discrimination in allocation of SNG feedstocks; make facilities that manufacture and transmit SNG subject to jurisdiction of F.E.R.C., with certain grandfathering and exemption)

Mr. DURKIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) proposes an unprinted amendment numbered 872.

Mr. DURKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following:

SEC. 16. Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following:

"(f) In exercising the allocation authority granted under this section, the President shall provide at least as favorable treatment with respect to the allocation of feedstocks for the manufacture of pipeline-quality gas as that provided any other non-Federal user. The term "pipeline-quality gas" shall mean gas the principal ingredient of which is methane and which is interchangeable and compatible with natural gas.

SEC. 17. Section 1(b) of the Natural Gas Act is amended by adding a new paragraph to read as follows:

"(3)(A) Except as provided in subparagraphs (B) and (E), the provisions of this Act shall apply to—

"(i) any facility owned or operated, in whole or in part, by a natural-gas company or an affiliate thereof for the manufacture of pipeline-quality gas for the purposes of transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption.

"(ii) the transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption of pipeline-quality gas, and

"(iii) any natural-gas company, companies or their affiliates engaged in such manufacture, transportation, or sale.

"(B) The provisions of this Act shall not apply to the mining, production, transportation, sale, delivery, or any other activity related to the furnishing of hydrocarbon-containing material (other than natural gas) to a natural-gas company or its affiliate for the manufacture of such pipeline-quality gas.

"(C)(i) If before the date of the enactment of this paragraph, any natural-gas company or its affiliate was engaged in the manufacture, transportation, or sale for resale, in interstate commerce, of pipeline-quality gas from hydrocarbon-containing material, the Commission shall issue a certificate for such manufacture, trasportation, or sale for resale, in interstate commerce, of such pipeline-quality gas without requiring further proof that the public convenience and necessity will be served by such manufacture, and without further proceedings pursuant to this Act or any other provision of law.

"(ii) If, before the date of enactment of this paragraph, a certificate of public convenience and necessity has been issued by the commission authorizing the transportation in interstate commerce of pipeline-quality gas manufactured from hydrocarbon-containing material or the sale in interstate commerce for resale for ultimate consumption of such pipeline-quality gas, the Commission shall issue a certificate for such transportation or sale for resale without requiring further proof that the public convenience and necessity will be served by such transportation or sale for resale and without further proceedings pursuant to this Act or any provision of law.

"(iii) Application for such a certificate shall be made to the Commission by such natural-gas company or its affiliate within 90 days after such date of enactment. Pending the determination of any such application, the continuance of such manufacture, transportation, or sale for resale, shall be lawful.

"(D) For purposes of this paragraph the term 'pipeline-quality gas' shall mean a mixture of hydrocarbons in a gaseous state (i) the principal ingredient of which is methane and (ii) that is interchangeable and compatible with natural gas as determined, by rule, by the Commission.

"(E) The provisions of this paragraph shall not apply to any local distribution company, or to any facility owned or operated by any local distribution company, or to any transportation in interstate commerce or sale for resale in interstate commerce of pipeline-quality gas unmixed, or any mixture of pipeline-quality gas and natural gas, by any local distribution company, unless such local distribution company transports in interstate commerce or sells for resale in interstate commerce more than 10 billion cubic feet of pipeline quality gas during any calendar year. For purposes of this paragraph the term 'local distribution company' means any person: (1) primarily engaged in the local distribution of natural gas at retail, and (2) regulated or operated as a public utility by a state or local government.".

Mr. DOMENICI. Will the Senator further identify this amendment? Are there any additional copies?

The PRESIDING OFFICER. The Chair will advise the Senator that copies are being made at the present time.

Mr. DOMENICI. I wonder if the Senator would agree to let the clerk read it at this point while the copies are being prepared.

Mr. DURKIN. It is rather long. I would be glad to explain it while we are waiting for copies.

Mr. DOMENICI. I have now received a copy. I thank the Senator.

Mr. DURKIN. I apologize for not having copies.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. DURKIN. Mr. President, this is the amendment that I asked to be included in the consent agreement. This is two amendments that originally were contemplated for the natural gas bill. Due to the parliamentary snag, they never got out of the starting gate.

There are just two problems.

Mr. President, the purpose of this amendment is to extend the jurisdiction of the Federal Energy Regulatory Commission to synthetic gas plants and facilities to assure that the construction and operation of such facilities meet a public convenience and necessity test.

Such amendment is necessary to create a climate in which such projects are undertaken in the magnitude needed to help alleviate the natural gas shortage and to assure that, when undertaken, they are carried to successful conclusion in a manner most conducive to the public interest. Coal gasification is one of the

principal means of supplementing the supply. These plants are very costly to build and operate. Without the protection afforded by a certificate of public convenience and necessity authorizing their construction and operation, it is doubtful i. projects will be undertaken to the extent needed by the energy shortfall.

In adopting a national energy plan, synthetic gas is an important ingredient which cannot and must not be overlooked.

Mr. JOHNSTON. Will the Senator yield?

Mr. DURKIN. Yes.

Mr. JOHNSTON. Is the purpose of this amendment to grant to the manufacturers of synthetic natural gas the same kind of allocation that the Federal Natural Gas Act has?

Mr. DURKIN. That was amendment 1282. That is part of this amendment. That is the first part. The second part is the grandfathering provision which will cover the gas plant at Freetown, Mass.

Mr. JOHNSTON. Grandfathering what?

Mr. DURKIN. It grandfathers that Algonquin plant. All of the others in operation were grandfathered.

Mr. JOHNSTON. Grandfathered for what purpose?

Mr. DURKIN. Exempting them from the Federal Power Commission certificating process. There are plants that furnish vital gas supplies in New England. The others were grandfathered. As I understand the situation—I am not sure how it came to pass—the others were grandfathered and this one was left out.

Mr. JOHNSTON. I wonder if the Sentor would agree to temporarily withhold the amendment until we can find out about this Algonquin plant problem. We were familiar with the SNG part of this amendment but not the Algonquin part

Mr. DURKIN. I would be glad to set it aside for a half hour.

Mr. JOHNSTON. Well, until we have a chance to work it out, if it takes longer than that.

The PRESIDING OFFICER (Mr. CLARK). Without objection, the amendment is temporarily laid aside.

Mr. DOMENICI. Mr. President, we have not agreed on a time certain. How long will it be set aside?

Mr. JOHNSTON. Just temporarily.

Mr. DOMENICI. I will say to the Senator from New Hampshire we may need a half hour or so to check it out. Before it is called up, I would appreciate it if the Senator would check with us. That might save some time.

Mr. JOHNSTON. Mr. President, if there are no amendments to be called up at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. JOHNSTON. To be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DURKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURKIN. Mr. President, I will repeat briefly what this amendment does.

Two amendments were lingering around after the ox got out of the ditch yesterday, and by unanimous consent they are part of this unanimous-consent agreement.

They do two things: No. 1, in the event that the House language brings the SNG plants under jurisdiction—there are only 13 currently operating, to my knowledge—they would not have to go back through the very cumbersome and expensive FPRC certificating process. These plants are vital to the gas supplies of New England and eastern States, and we cannot risk the loss or the possible loss of their gas because they are caught up in a recertification provision. They have been functioning. There is no question about that. If the language of the House is adopted, it just eliminates the possibility that these very valuable plants would have to devote considerable time, money, and energy to getting recertified.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays?

Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DURKIN. Mr. President, the second part of this amendment is to extend the jurisdiction of the Federal Energy Regulatory Commission to synthetic gas plants and facilities, to assure that the construction and operation of such facilities meet a public convenience and necessity test.

This works two ways. It protects the public, to make sure that adequate consideration is being given. It also makes it easier and cheaper in the long run to construct these very vital and necessary plants.

The third part of the amendment solves a problem that is designed to modify existing FEA policy during the allocation of feedstocks used in the production of synthetic natural gas. The present policy of the FEA discriminates against SNG production. FEA regulations presently limit existing plants to 1972–73 level in usage, whereas non-SNG uses of naphtha receive allocations of 100 percent of current requirements, without any regulatory hassle.

The third aspect of the amendment rectifies the imbalance created by the FEA and just gives the SNG equal chance, equal opportunity, to get feedstocks.

Again, this has a regional impact, and that is one of the reasons why I am interested in it.

As the President alluded in his April 20 statement, the SNG plays a vital role in this country, but especially in the Northeast. We would not have made it through the winter last year if we had some of the problems faced by the people in Ohio and in the Midwest, had it not been for SNG and the SNG plants. So this amendment solves those problems. It eliminates the need to go back through the recertification process for the existing plants. It brings the new plants under the Federal Energy Commission certificating process. Third, it gives the plants an equal shot at the feedstocks.

Mr. HATFIELD. Mr. President, I commend the Senator for bringing this matter to our attention. I believe we have had consideration of this matter during the long period of natural gas deregulation discussion, and I do not really feel that it belongs on this bill at this time.

In no way do I denigrate the importance of the amendment by indicating that I think we would have to oppose the amendment at this time.

Mr. JOHNSTON. Mr. President, the issues brought forth in this amendment by the distinguished Senator from New Hampshire are very important, and I think that after a hearing, we may well go along with these changes. But these are very fundamental changes.

Under the present law, plants making synthetic natural gas are not regulated by the Federal Power Commission for price in the sale of their natural gas. Under this amendment, as I understand it, these plants that would manufacture this synthetic natural gas would be subject to such price control. That means that in the building of these plants, the cost would have to be figured into the rate base and the rates determined in accordance with cost-based figures.

This, in fact, may be a very good thing. We may decide after hearings that that is what we want to do. But the one thing we do know is that it would have a very dramatic effect upon whether or not synthetic natural gas plants are going to be built. That simply is not a question that this Senator or the committee is prepared to rule on in a definitive way at this time.

It is, as I say, a very far-reaching amendment affecting synthetic natural gas and, for that reason, we would hope the distinguished Senator would be willing to defer this matter until the first of the year when we can have hearings on this and, at that time, hopefully, report it out. But at this time, with respect to that part of the amendment, we would have to oppose it.

Now, with respect to the Algonquin plant, the committee, I think, is in somewhat of a state of lack of information with respect to the Algonquin plant. The Algonquin plant, as I understand it, makes synthetic natural gas from naphtha, and under this amendment they would be deregulated and would not be subject to Federal Power Commission control.

Mr. DURKIN. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. DURKIN. I know the Senator from Kentucky is vitally interested in it as well as I, and we can both count, and with the combined opposition on both sides of the aisle I think we would have to be very persuasive in 15 minutes, and this probably is most likely to go down the drain.

I think that would be unfortunate because it might keep it down the drain for a longer period than would be the case if I could get assurances—and I think I speak for the Senator from Kentucky—that we could get a hearing on these very, very vital issues involved here, the three issues, because I am concerned about the equal allocation of feedstocks, as well as the grandfathering of the existing plants, and licensing of the new SNG plants.

I look at it from a safety point of view, and what-have-you, and if I can be assured that we will get full hearings and early hearings, early in January, I think my cosponsor from Kentucky has no objection, and we would withdraw this amendment at this time because of the assurance of early hearings in January.

Mr. JOHNSTON. I can assure the Senator that at our first opportunity—I cannot assure him January, but I would say, and undoubtedly not later than February—we could have full and complete hearings from the standpoint of the chairman of the subcommittee. I am not opposed to this amendment. We simply do not know enough about it. I think we would have those full hearings at our first opportunity after the first of the year, and we would be inclined fully and sympathetically to consider it at that time.

Mr. FORD. Mr. President, if I may, I agree with the Senator from New Hampshire that if we get early hearings, I am willing to join him in withdrawing this amendment.

I think a vote on this, when there will be more Senators to look at it and have an opportunity to know what it means, and think about it a little bit, even if it goes down the drain—and there are very few people listening here, and Senators walk in the back door and find out who is for it and who is against it—synthetic natural gas is important to New England, and the grandfather clause you have is important to your area, and I think you ought to fight for the best interests of the people in your area, and I think you are doing right.

But we are realists and we understand it. Both sides of the committee are opposed to us, and the numbers will be tough for us to get.

So, on the basis that we will get an early hearing, hopefully in January but no later than February, we will have the opportunity to bring this back. I see the chairman of the committee is here now, and I am hopeful he will concur in this request that the Senator from New Hampshire and I would agree to, and if it is agreed to we will withdraw this amendment.

Mr. DURKIN. Mr. President, will the Senator yield?

Mr. FORD. I am through.

Mr. DURKIN. The chairman of the full committee has just assured me that we would get early hearings.

Mr. FORD. On that basis, Mr. President, I will join with the Senator from New Hampshire in withdrawing the amendment.

Mr. DURKIN. Mr. President, so far as the withdrawal process is concerned, I ask that the record reflect that Senator FORD is a cosponsor, as well as Senator MCINTYRE from New Hampshire.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask unanimous consent that an additional amendment by Mr. DURKIN be allowed to be substituted for this amendment, as per the original unanimous-consent agreement on this bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JOHNSTON. Mr. President, earlier in today's consideration, the distinguished Senator from Massachusetts (Mr. KENNEDY) offered an amendment relating to antitrust examination of new nonnuclear plants. At that time I had stated on behalf of the Democratic side of the committee that we were inclined to accept the amendment and take it to conference.

I did that even though we had sent out word informally that the committee did not feel inclined to accept any amendments that were nongermane to the bill, and that extended Federal control over State matters.

Since I made that statement on behalf of the committee, a great deal of opposition has come to my attention, and I have, therefore, sent word to the distinguished Senator from Massachusetts that we would have to object to this amendment.

As I understand it, it is scheduled to come up at 3 o'clock. I will tell that to the distinguished Senator from Massachusetts as soon as he comes on the floor. But I wanted to say it at this point to give other Senators who may be on the floor notice of that fact.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes, I will yield.

Mr. HATFIELD. As the Senator knows, during the markup session I raised some questions concerning section 11 on page 12 of the bill which purports to establish a National Regulatory Research Institute.

What I would like the Senator to clarify for my understanding is what happened thereafter since I had a conflict of committee sessions.

At the time that I raised questions involving this National Regulatory Research Institute it was indicated by the committee record that this would be withheld until information that I had requested was provided.

I have not received such information subsequent to that action by the full committee, and I read in the committee report the language that is supposed to clarify this section and, frankly, I only find it more confusing because I would draw the Senator's attention to page 17 of the report language when it says:

> This section establishes an institute intended to provide economic and technical research to state regulatory authorities on utility regulatory policy issues. It is the committee's understanding that the National Regulatory Research Institute was established by the National Association of Regulatory Utility Commissioners (NARUC). The Institute is to be a nonprofit unit of the Ohio State University under the direction of a Board composed of members chosen from NARUC, the university and the general public. The institute is to carry out research and related activities directed to the needs of State regulatory commissioners, to assist the state commissioners with developing innovative solutions to State regulatory problems, and to address regulatory issues of national concern.

Is the institute in existence and, if so, what is its generic heritage? If it is to be established by this act then what is the report language as it indicates the fact that it was already established by the National Association of Regulatory Utility Commissioners?

I am frankly confused as to exactly the status of this particular institute, and I also object strenuously to appropriating $2 million to provide 80 percent of its costs, which means it would have a budget of some $2.5 million, when we know little about its structure or about its existence or about its responsibilities.

Could the Senator comment on these questions?

Mr. JOHNSTON. Yes. First of all, I would like to say that this was heard in full committee or at least it was considered in full committee. But, nevertheless, as the chairman of the subcommittee I was not aware of the Senator's concern. Perhaps I should have been, and perhaps it was even said at a time when I was present. But if it was I was not aware of the Senator's concern. If I should have been more observant, I apologize to the Senator. I was not at that time aware of it.

As I recall from memory, after the markup it was stated that this institute is in existence; that it is in existence at Ohio State University, and it is supported by the National Association of Regulatory Utility Commissioners.

Since that time we have found that the National Regulatory Research Institute is in existence only to the extent that it has bylaws that have been effected, but no ongoing structure; that it has no staff, and the director has yet to be selected.

It, as I say, does have bylaws that provide for a director, its relationship to the university, the powers of the board, the membership of the board, the chairman of the board and secretary, meetings of the board, nominating committee, quorum, manner of acting, amendments, and that Ohio State University and NARUC will make contributions. But it is not in existence in the sense that it does not have a staff and does not have a director.

Mr. HATFIELD. Is the Senator aware that 6 weeks ago in the Wall Street Journal there was an advertisement, asking and recruiting for a director for this Institute? My question then is who is governing the institute now and who is hiring, or who is recruiting a director? What is the governing body that is in existence?

Mr. JOHNSTON. The governing body is the National Regulatory Research Institute, established by the National Association of Regulatory Utility Commissioners.

Mr. HATFIELD. What is that body? Is that a board of regents, trustees, or

board of directors? Who appoints them because in this bill it indicates the Institute shall be governed by, and then it says who shall appoint? So this again leads to my question as to what are we really appropriating or authorizing here when we know so little about it.

Mr. JOHNSTON. I can tell the Senator from the bylaws how it is made up. First of all, the Institute is a unit of the university under the office of the provost. It shall have a director, who shall be a member of the university's faculty, and shall be responsible for managing the operations of the Institute.

The board is to advise the director on the policies and research programs to be carried out by the Institute and shall report to the Institute from time to time. There are three classes of members on the board with equal rights. There shall be university association and public classes of members with five members in each class.

Mr. HATFIELD. Is that board now chosen? Is that board now in existence?

Mr. JOHNSTON. I am advised that it is not in existence.

Mr. HATFIELD. Then who is recruiting the director?

Mr. JOHNSTON. I understand they have an ad hoc committee presumably made up of National Association of Regulatory Utility Commissioners, and a temporary director who is Dr. Donald V. Flower, dean of the Ohio State University College of Engineering.

Mr. HATFIELD. Mr. President, again I wish at some appropriate time when the author of this section, Senator METZENBAUM, I believe, is present——

Mr. JACKSON. He is on his way here.

Mr. HATFIELD (continuing). To have a chance to respond, but I would frankly like to have this section removed from the bill.

I speak from a little bit of experience when I say that establishing an institute that is to be an adjunct to a university with a separate board of governors and have funding from the Federal Government raises some very profound problems and questions. We can take and give examples from Stanford University's Food Institute and SRI, the Stanford Research Institute, the Hoover Institution of War, Revolution, and Peace. All of these are at one university, and I can cite other universities as well.

Until we have a clearly established definitive body it is premature for this Congress to authorize expenditures of public funds which in effect is really launching an institute rather than making a judgment on the validity and the capacity of that institute to perform a service because it is not other than on paper at this time. We have many Federal agencies that can perform all kinds of economic services for and render technological advice to various regulatory agencies, without buying this sort of nebulous concept before it has really been established and buying the headaches that go with it. The first thing that is going to happen is we are going to get in all kinds of regulations from HEW as it relates through the university administration, and we are going to have conflicts there that we are going to have to resolve because of these Federal funds.

I just feel very strongly that we should remove it, and I must say that if we do not see fit to remove it, I will have to put the Senate on notice that I will certainly fight, as a member of the Appropriations Subcommittee, at least funding it until we can get this kind of clarification of exactly what this institute is all about. I may be an enthusiastic supporter of the institute and public funding of it once it is established and clearly identified. But, right now, with this kind of rather vague proposal that we are really going into major support, with up to 80 percent of the funding—let us say it is 80 percent—$2.5 million can buy an awful lot of economists, and I am not sure that we want to buy that many or $2.5 million can certainly get an awful lot of technical people into some kind of a roundtable discussion. It seems to me we are moving much too quickly to support something that is yet to be really defined and established.

Mr. JOHNSTON. I must say to the Senator I was under the impression that it was further along in its creation than I am now advised. But I think it would be appropriate for the distinguished Senator from Ohio (Mr. METZENBAUM) to reply to the Senator.

Mr. HATFIELD. I agree, and I will withhold any motion until he arrives on the floor.

Mr. JOHNSTON. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Is there another amendment to be called up?

UP AMENDMENT NO. 873

(Purpose: Expansion of cogeneration analysis)

Mr. HART. Mr. President, I send to the desk, on behalf of myself and Mr. SASSER, an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART), for himself and Mr. SASSER proposes an unprinted amendment numbered 873.

Mr. HART. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, between lines 21 and 22, insert the following:

WASTE HEAT ENERGY RECOVERY POLICY ANALYSIS

SEC. 14. (a) The Secretary is authorized and directed to conduct, in consultation with the Environmental Protection Agency, the Federal Trade Commission, and other appropriate agencies, a full and complete analysis of the economic, social, environmental, and technological feasibility and consequences of implementing, on a nationwide scale, various waste heat energy recovery and use techniques. The policy analysis shall include the development and application of industry-by-industry surveys of existing and projected patterns of steam- or heat-energy generation, according to steam pressure, size of installation, load curve characteristics and other appropriate criteria, to ascertain the national potential for recovering and using waste heat energy and for the development of industrial and utility site cogeneration systems. At or before the expiration of each six-month period following the date of the enactment of this Act, the Secretary shall submit to the Congress and to the President an interim report on the status of the policy analysis provided for by this section. A final report, in three parts, shall be prepared and submitted as hereinafter specified.

(b) PART 1. FEASIBILITY AND CONSEQUENCES.—At or before the expiration of the twelve-month period following the enactment of this Act, the Secretary shall submit to the Congress and to the president part 1 of the policy analysis final report. The scope of part 1 shall be the potential benefits and impact of a national policy promoting the recovery of waste heat energy and the development of industrial and utility site cogeneration systems. Part 1 of the final report shall include a thorough examination and assessment of at least the following subjects:

(1) the net potential energy, capital, and consumer savings realizable from maximum development of waste heat recovery systems and industrial and utility site cogenerators;

(2) the effects of industrial site electric power generation on the United States electrical network;

(3) the reliability and defense security of multi-source versus larger single-source systems;

(4) and and all air, water, solid waste, or other possible environmental problems associated with waste heat recovery systems and industrial and utility site cogenerators and with various coal-burning technologies such as fluidized bed combustors;

(5) the effect of existing public policies, including subsidies and economic incentives and disincentives, on efforts to recover and use waste heat energy; and

(6) waste heat energy conservation and recovery practices and policies in foreign countries.

(c) PART 2. COMPETITION IN THE ELECTRIC UTILITY INDUSTRY.—At or before the expiration of the eighteen-month period following the enactment of this Act, the Secretary shall submit to the Congress and to the President part 2 of the policy analysis final report. Prepared in consultation with the Bureau of Competition of the Federal Trade Commission, part 2 shall analyze the interrelationship between increased competition in the electric utility industry and the objective of promoting the recovery of waste heat energy and the development of industrial and utility site cogeneration systems. Part 2 of the final report shall include a thorough examination and assessment of at least the following subjects:

(1) appropriate ownership arrangements for equipment, transmission lines, and energy required or created by application of cogeneration and other waste heat recovery techniques;

(2) the feasibility and consequences, from a regulatory, economic, and technological standpoint, of separate ownership and operation of facilities for generating, transmitting, and distributing electric energy, and means to promote such separate ownership and operation;

(3) the effect on competition, and on the ability to compete, of tax and other public policies relating to the sale of electric energy;

(4) means to reduce legal and regulatory restrictions on entry into the business of generating, transmitting, and distributing electric energy;

(5) means to promote greater use of wheeling and sales of electric energy for resale; and

(6) the feasibility and consequences of separate ownership and operation of facilities for electric energy and for natural gas distribution.

(d) PART 3. PROPOSALS FOR GOVERNMENTAL ACTION.—At or before the expiration of the twenty-four month period following the enactment of this Act, the Secretary shall submit to the Congress and to the President part 3 of the policy analysis final report. Part 3 shall identify the legal, regulatory, economic, and social factors impeding the rapid development and implementation of industrial and utility site cogeneration systems and other waste heat energy recovery techniques. In addition, part 3 shall contain specific proposals for governmental action designed to reduce or eliminate existing impediments to such rapid development, and shall include a thorough examination and assessment of at least the following subjects:

(1) JURISDICTION.—Identification of the governmental authority or authorities most properly charged with regulating the development and operation of industrial site and utility site cogeneration and other waste heat recovery systems and related transmission, distribution, and other facilities, including specifically—

(A) the determination of rates or guidelines for rates for sales of electric power from industrial site cogenerators and other waste heat recovery systems to utilities and for sales of electric power from utilities to such cogenerators and systems; and

(B) the establishment of a forum and procedure for the fair and efficient resolution of disputes between generators, transmitters, and distributors of industrially generated electric power;

(2) REGULATORY MEASURES.—Identification of such regulatory action as may be appropriate to promote increased waste heat energy recovery and use, including:

(A) requiring that electric utility transmission facilities be deemed common carriers, with wheeling services available to all producers of electric power at a published tariff rate;

(B) reducing standby demand charges to industry in consideration of industrial assumption of a portion of the burden of providing electric power;

(C) granting industrial generation of electric power for sale to the utility system a priority use status in any national allocation of fuels;

(D) requiring industrial site cogenerators to provide auxiliary electric power generation capacity for use during industrial plant shutdown periods;

(E) assessing peakload pricing as a policy tool for encouraging waste heat recovery and use;

(F) evaluating the effect of proposed rate structure changes such as time-of-day pricing, life-line costing, marginal pricing, and constant industry and residential rates on extensive development of waste heat conservation and recovery practices; and

(3) INCENTIVES AND DISINCENTIVES.—Identification of measures calculated to encourage private action leading to increased waste heat energy recovery and use, including—

(A) amendments, addition or exemptions to or from those provisions of the Federal Power Act, Public Utility Holding Company Act, related Federal legislation, and State and local public utility regulations having the greatest effect on waste heat conservation, recovery, and use techniques;

(B) employing waste heat charges as a waste heat conservation, recovery, and use strategy;

(C) various tax incentives and disincentives such as an increased investment tax credit and accelerated depreciation for properties and equipment dedicated to waste heat energy conservation and recovery uses, and increased taxes on enterprises wasting excessive quantities of heat energy;

(D) regulatory disallowance, in determining just and reasonable rates, of capital costs for the construction of additional electric utility generating capacity where industrially generated electric power is available; and

(E) fuel taxes on enterprises requiring significant quantities of steam or heat energy that do not adopt measures to conserve, recover, and use that energy.

ANNUAL REPORT

SEC. 15. Beginning one year following submission of part 3 of the policy analysis final report and continuing at annual intervals thereafter, the Secretary shall report to the Congress and to the President on the progress made toward definition and implementation of an effective national policy promoting waste heat energy recovery and development of industrial and utility site cogeneration systems. The Secretary's annual reports shall include at least the following subjects:

(a) current forecasts of technological, economic, social, and environmental factors bearing upon effective implementation of the national policy;

(b) perceived trends and changed circumstances anticipated to affect the national policy;

(c) effectiveness of policy measures thus far adopted; and

(d) proposed additions or modifications to the national policy as then constituted.

ADDITIONAL PERSONNEL

SEC. 16. The Secretary and the Director of the Bureau of Competition of the Federal Trade Commission are each authorized, without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, and without regard to the provisions of chapter 51 and subchapter III of chapter 53, title 5, United States Code, relating to classification and General Schedule pay rates, to appoint and fix the compensation of such additional personnel as may be necessary to enable the Secretary and Director to carry out their functions under this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are authorized to be appropriated a sum not to exceed $3,000,000 during each of the fiscal years 1978, 1979, and 1980 to carry out the provisions of sections 14, 15, and 16 of this Act.

RESEARCH, DEVELOPMENT, DEMONSTRATION AND TECHNOLOGY TRANSFER PROGRAM

SEC. 18. (a) The Administrator of the Energy Research and Development Administration shall initiate and carry out a research, development, demonstration, and technology transfer program for the purpose of (1) improving the efficiency and performance of industrial and utility site cogeneration and other waste heat recovery systems and (2) providing industrial and utility site cogenerators and other such systems a capability to use effectively coal or fuels other than natural gas or petroleum as the primary energy source. Such a program shall be formulated and carried out to effect a smooth transition from petroleum and natural gas to coal, and to a lesser degree, synthetic fuels derived from coal and oil shale, or alternate fuels derived from nonopetroleum sources, especially solar energy. Technology development shall focus on improving the cost effectiveness, performance, and efficiency of prime movers and ancillary equipment of the scale required for cogeneration and other waste heat recovery systems. Ancillary equipment development shall emphasize heat recovery components with a view to improving existing powerplants and providing the necessary technology base for optimizer heat recovery systems in new powerplants. To facilitate eventual replacement of present generation cogeneration and other waste heat recovery system prime movers that normally require distillate or natural gas as fuel, emphasis shall be placed on prime mover technology that will permit durable operation on lower grade heavy petroleum fuels with an ultimate capability for conversion to synthetic or alternate fuels when they are commercially available.

(b) Prime mover alternatives shall also be developed to permit future commercialization of more optimized cogeneration and other waste heat recovery systems. These shall include options such as external combustion engines capable of efficient operations with fluidized beds of all scales and other methods for environmentally acceptable coal utilization, fuel cells capable of operation with coal or gasified coal, and topping cycles that can extend the upper temperature operating limit and substantially increase the efficiency of cogeneration and other waste heat recovery systems while retaining the capability for virtually complete fuel source flexibility.

(c) The Administrator of the Energy Research and Development Administration shall take such action as may be necessary to assure that a reasonable proportion of the demonstration programs under this title are sited in electricity deficient areas of the United States.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated a sum not to exceed $5,000,000 during fiscal year 1979 to carry out the provisions of section 18 of this Act.

On page 15, line 23, strike out "Sec. 14." and insert in lieu thereof "Sec. 21.".

On page 16, line 19, strike out "Sec. 15." and insert in lieu thereof "Sec. 22.".

On page 17, line 11, strike out "14" and insert in lieu thereof "21".

Mr. HART. Mr. President, I offer this amendment to devise a comprehensive congressional approach to waste heat recovery.

Waste heat recovery quite obviously refers to recovering heat that we now waste for reuse for a number of purposes.

Heat is energy—a fact still taught in grammar school. If you merely use fuel once, you really only squeeze out about a third of its energy—the other two-thirds of that fuel is simply wasted. Right now, we are dissipating mass quantities of useful thermal energy into our skies, rivers, and streams.

Two-thirds of all the energy used by manufacturing firms and electric utilities—the equivalent of over 8 million barrels of oil a day—is unnecessarily thrown off as waste heat. Those two types of industries alone waste as much energy as we import—needlessly.

All over the world, people are recovering and reusing their energy waste to produce needed thermal, mechanical, and electrical power. Well over half of Denmark's home and other heating needs will be met by utility site cogenerators in 1985. Besides making electricity, these Danish utilities use their waste steam to heat people's houses—houses that can be cooled in the summer from the same, otherwise wasted, energy resource.

In this country, industrial firms wasted enough heat energy last year to meet 80 percent of all our electricity needs. But unlike Sweden, West Germany, and other countries, which produced over 20 percent of all their electrical needs from waste heat, less than a pitiful 4 percent of our electric power was cogenerated.

Cogeneration sounds technical, but the concept is very simple. About a fifth of our total energy budget is used by industry to make steam for manufacturing

products like paper, glass, chemicals, textiles, and petroleum. Again, two-thirds of this energy is wasted. But cogenerating industries use their waste steam to also generate electricity—at less than half the usual cost.

The amendment I offer now sets this country on a rational course for a better future in this regard.

First, a comprehensive series of policy analyses are required, with Federal Trade Commission and Environmental Protection Agency participation. The goal of these analyses is to propose within 2 years a range of alternative courses of action for establishing a national waste heat recovery policy.

Industrial cogeneration is only a part of any real effort to recover waste heat. My amendment provides for an analysis of not only cogeneration, but also district heating, energy cascading, and the concept of total energy systems. District heating lets us use otherwise wasted steam to heat homes and even farmland so that fields can be productive year-round. Total energy systems combine presently separate industrial processes in order to squeeze out the total energy value from fuel.

Second, an oversight mechanism is created within the Department of Energy. My amendment would direct the Secretary to make annual reports to Congress on the progress of the waste heat recovery policy, including proposals to improve it.

Third, my amendment gives specific statutory authority for the successor agency to the Energy Research and Development Administration to commence an intensive research, development, demonstration, and technology transfer program. The first year authorization for the program is $5 million—this figure is five one-hundredths of 1 percent of the annual savings from cogeneration alone in a decade.

This amendment has the full support of industry and environmental groups. It has the support of the National Rural Electric Cooperative Association. It is supported by the Governor of Tennessee, the scientific community, and even some State regulatory commission members nationwide.

This amendment does nothing controversial. It studies waste heat recovery—not just industrial electricity generation. It provides answers for us, and will give us a range of options from which to choose for enacting a national waste heat recovery policy. And it provides for an automatic oversight mechanism to make sure that what we intend to have happen does, indeed, happen.

To speed up the development and application of improved ways to use waste heat, the amendment provides for an extremely modest R. & D. program.

Mr. President, I hope the Committee will see its way clear to support this very straightforward amendment. One which will help pave the way for a very sound national policy in the very near future to help recapture some of this country's needlessly wasted energy.

I ask unanimous consent to have printed in the RECORD a statement setting forth further facts in support of the amendment.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT

Cogeneration doubles the usefulness of fuel. A study for the Federal Energy Administration concludes that we can save 1.86 million barrels of oil-equivalent every day by 1985 if only 3 industries—paper, chemicals and petroleum—cogenerate. At $15 a barrel, that equals a savings of nearly $28 million dollars every day, or over $10 billion every year! And this $10 billion a year savings is in reduced fuel costs alone.

Cogeneration could cut the environmental damage of our present, wasteful practices substantially.

Cogeneration could alleviate the need for some additional nuclear powerplants. If only half of all the new industrial steam-raisers coming on-line in the next ten years also cogenerate electricity, the Library of Congress states that enough power would be produced to replace the need for between 10 and 14 giant new nuclear powerplants. Experts at Princeton University write that cogeneration can reduce ERDA's estimate for needed nuclear power capacity in the year 2000 by exactly one-half.

The cogeneration saves our capital resources. A study by Dow Chemical Company states that cogeneration can cut the need for new capital investments to make electricity by about $5 billion every year in the next decade.

Cogeneration can save consumers money. The same Dow Chemical study concludes that cogeneration can save household consumers as much as $3.6 billion every year in reduced utility bills.

Why are they cogenerating in Sweden, Denmark and every other industrialized country except the United States?

Fifteen years ago, 15 percent of our electricity was cogenerated. Today we are down to about 4 percent.

The reasons for this reduction fall into 4 categories:

First, there are technological barriers. Coal-burning cogenerators can produce only a quarter of the electric power that oil- or natural gas burners can make.

There are promising solutions to this problem, however.

Fluidized bed combustors have operated successfully in Europe, and even in this country. These combustors can burn coal or any other organic material for fuel, virtually pollution free. Connect a fluidized bed to a cogeneration system, and you match the electrical production of an oil-burner.

Is there any widespread effort to apply the fluidized bed concept to waste heat recovery? No, not in this country.

The artificially low price of energy means that it is not profitable for industry to develop waste heat recovery systems. It will be profitable in a few years, but can we afford to wait at a cost of $10 billion a year?

It is in the public interest to develop more and better ways to recover and re-use our waste heat energy resources—totaling over 8 million barrels a day. Clearly, the Federal government has a duty to help push fluidized beds and other promising waste heat recovery technologies to the marketplace. But there exists no statutory authority for such a development effort.

My amendment provides long-needed statutory authority, and authorizes a modest sum to begin an intensive waste heat recovery R&D effort—$5 million in fiscal year 1979. If we devoted as much money to find ways to recover and re-use waste heat as we will save in the future from cogeneration alone, the technological barriers to waste heat recovery would be eliminated in short order.

Second, there are economic barriers to cogeneration. Until we find a way to reflect the real benefits of conservation on corporate balance sheets, we cannot realistically expect industries or utilities to conserve.

The best way to resolve the economic barrier? We do not know, precisely. President Carter and I support granting an additional 10 percent investment tax credit for purchases of waste heat recovery equipment. My amendment to the energy tax bill would have the credit automatically expire at the end of 3 years. By that time, Congress will have absorbed the range of solutions that the study required by this amendment will have proposed.

Third, there are regulatory barriers to cogeneration. Industries are prohibited from cogenerating in some places. Federal laws are ambiguous about cogeneration, and some provisions of the Federal Power Act and the Public Utility Holding Company Act are too burdensome for small power producers to cope with. The bill, as reported by the Committee, addresses this problem by authorizing the Secretary of Energy to exempt cogenerators from those two Acts.

Fourth, and the most difficult obstacle to overcome, are institutional barriers.

The fact is that private utility companies have historically REFUSED to permit cogeneration in their service areas. Lower electricity and capital costs mean less gross profits.

The study required by my amendment will give us a broad range of choices from which to select for addressing the institutional barriers to cogeneration and other ways to recover and re-use waste heat.

But at a potential future cost of $10 billion a year, we cannot afford to delay addressing this critical issue. This can be best accomplished, on an interim basis, by a moderate amendment I support to the energy bill now pending in the Finance Committee.

COGENERATION

Mr. SASSER. Mr. President, I would like to express my strongest possible support for the approach to cogeneration advanced by my colleague from Colorado (Mr. HART). The reasons for adopting these amendments are compelling, and I would like to commend the Senator for his fine amendment.

First, let us consider carefully and judiciously how crucial the actions of the Federal Government are in promoting a greater degree of waste heat recovery and onsite generation of electricity. We should examine the issue from its broadest possible perspective.

A few statistics should make abundantly clear the centrality of waste heat recovery strategy to our national energy policy.

First, the production of steam for generating electricity and for use in industrial processes accounts for a staggering proportion of our national energy budget. Fifty percent of our Nation's energy consumption results from just these two energy intensive activities.

Second, due to the second law of thermodynamics, only one-third of the steam which industry creates is ever used for the purpose for which it is created. Two-thirds of this steam is literally wasted. The amount of this daily waste is about equal to the energy value of the foreign oil our Nation imports each day. Mr. President, on this day alone we are discharging into rivers and into the sky the thermal equivalent of 8 million barrels of oil.

Third, a moment ago I mentioned that utility and industrial generation of proc-

ess steam use roughly half the Nation's energy. This figure becomes even more startling when we consider that our country consumes about one-third of the world's energy. So the approach we decide to take to waste heat recovery today will have a significant influence upon global efforts to cope with energy supply depletion.

Fourth, the area of energy consumption to which these waste heat utilization amendments address themselves is fully 15 percent of the energy consumed by this entire planet, Mr. President.

The basic waste heat recovery concept is fairly well understood, but, we must take positive actions if industry is to tap this energy resource.

I would like to emphasize how some of the waste which takes place is in ERDA's own backyard. In Oak Ridge, Tenn., there is a gaseous diffusion plant which enriches uranium for subsequent sale to electrical utilities with nuclear powerplants. That gaseous diffusion plant uses fully 10 percent of the energy which our Tennessee Valley Authority generates. This one plant, one of four large energy wasters which ERDA runs, wastes the thermal equivalent of 1,400 megawatts an hour. The Senate recently debated, at length, the Clinch River breeder reactor when this committee brought the ERDA fiscal year 1978 nuclear authorization to the floor. The subject of that debate is a proposed nuclear plant which would generate, at full capacity, only one-quarter of the energy potential which is wasted by this one gaseous diffusion plant.

President Carter has called for recovery of the waste heat from this plant and from others at Portsmouth, Ohio; Paducah, Ky.; and Savannah River, S.C. I know that the people of Tennessee would like to see this energy reclaimed and used in industry, in agriculture, in fishponds, and in heating homes in the area of the plant.

A recent study by the Oak Ridge Chamber of Commerce showed the job-creation potential of recovering this waste heat. Using only 5 percent of this waste heat in such uses would produce 900 jobs in an area which needs to diversify its economic base. Even more jobs would be created if we could get full use of this waste heat potential.

But unless an appropriate emphasis is placed upon the development of the technology to make use of this uranium enrichment plant—waste heat—which comes out in the form of hot water in the range of 140° to 160° Fahrenheit, the heat will not be fully recovered for several more years.

I am sure the Members of the Senate realize the need for a strong research, development and technology transfer effort in the areas of waste heat recovery and cogeneration. This amendment begins the job.

Mr. President, I have discussed this bill from several perspectives—from world and national energy consumption, from the perspective of technology research, and from the interests of my State of Tennessee.

I would like to end on one final theme which also merits the attention of the Senate. We all know conversion to coal has a number of undesirable impacts about which we are only beginning to learn. There is widespread concern over increasing the level of carbon dioxide in the world, increasing pollution particulates, and possibly setting in motion a greenhouse effect which could raise global temperatures.

President Carter has asked for at least $1.5 million just to study the greenhouse effect. And other climatological research efforts are being stepped up.

My point in raising these concerns is this—to the extent that we recover waste heat energy and use it for productive purposes, we are reducing the amount of fossil fuel energy we shall have to burn. Coal combustion has far greater environmental effects than the combination of either natural gas or oil.

We should seek to maximize the amount of energy we produce whenever we use coal to fire a boiler or produce steam to turn a turbine. When we cogenerate electricity or otherwise utilize waste heat, we are preventing some very serious environmental effects. Cogenerated power causes only half as much pollution and uses half the energy as the most efficient central station powerplants.

Enacting these amendments would be a preliminary and prudent step toward full recovery of our waste heat energy. I would remind the Senate of the President's words:

> Our energy problems and our environmental problems have the same causes—wasteful use of resources.
>
> Conservation helps us to solve both problems at once.

I can think of no more succinct explanation of why these thoughtfully constructed amendments merit adoption.

Mr. JOHNSTON. Mr. President, we very much commend the distinguished Senator from Colorado for his leadership, not only in the area of cogeneration but in other forms of energy conservation, solar as well as any number of other initiatives in which he has taken the leadership in the Senate.

Cogeneration, as he states, is a very promising sort of energy conservation, to catch that waste heat which is ordinarily lost under present industrial and electric generating practices.

However, Mr. President, we must oppose this amendment. We do so, not because of opposition to cogeneration; quite the contrary. This amendment could, by calling for a 2-year study, actually delay, in some respects, the implementation of total cogeneration, because it could be used as an excuse to delay in the meantime.

I must say that the principal objection, however, is with the proliferation of Federal dollars. This study would involve some $14 million in all: $3 million for each of 3 fiscal years, 1978, 1979, and 1980, to carry out the study, together with $5 million for an ERDA program for research, development, and demonstration and technology transferring.

Mr. President, ERDA is already directed, under S. 2114, to recommend guidelines on cogeneration to State regulatory authorities. Implicit in that requirement is the necessity for the Department of Energy to study the problems associated with cogeneration.

In a word, the committee simply opposes given carte blanche authority to hiring and fixing compensation for more employees in the Department of Energy and FPC. I guess you would say our bottom line is too many employees and too many dollars; and while we support cogeneration, we believe this is too much at this time.

Mr. HART. First of all, Mr. President, I am not sure what it is that the Senator from Louisiana, the distinguished floor manager, contemplates would happen in the field of cogeneration in that 2-year study period.

Second, I point out that the study is divided into three parts, the first of which is to be completed in 12 months, the second in 18 months, and the third in 24 months. So it is spaced over a 2-year period.

The first part of that study would provide the kind of analysis that is necessary to indicate the major steps in determining the long-range policy directions that must eventually be taken. The study would provide a necessary information base to implement waste heat recovery programs nationwide, and would better insure that these programs will yield net energy and consumer savings. We can wish for this to happen and dream about it. But unless we take these rational and logical steps to provide us with the analysis that we need to legislate further, it is wishful thinking to believe that such an important energy conservation alternative will evolve by itself in the best possible way for the country. A 2-year study will not, logically, prevent us from enacting an interim program of incentives to encourage cogeneration. Of course, these incentives must be appropriate to the knowledge and understanding of the issue that we do possess.

This very modest legislative proposal shall improve our understanding of the major policy issues raised by waste heat recovery so that Congress can enact legislation which will get this country into the 20th century. It will also allow us to catch up with our other industrialized friends and allies.

Mr. JOHNSTON. Well, it is the position of the committee that the Department of Energy, which is required to recommend guidelines to the State regulatory authorities, will already do the necessary research.

Testimony before us, however, indicates that the main problem with cogeneration is not that we do not understand the techniques and the technology, but the reason why it has not been used in the past has been, for the most part, simply economic: Fuel was so cheap that you did not have to worry about locating facilities together so as to capture the wasted heat or wasted energy. As the price of fuel has gone up, that has become necessary not only from the standpoint of conservation but from the standpoint of economics.

So testimony before us has indicated that, yes, they might well need some tax incentives, and this Senator will probably be very kindly disposed toward those tax incentives; and if we had more of a problem with technology and more of a

problem with research, I might say an expenditure of $14 million for additional studies and additional employees might well be warranted. But since DOE is already required to recommend the guidelines and will have to do the necessary research and data commensurate with making those guidelines, the basic purpose of the Senator's amendment is already accomplished under the existing bill, without having the money and the employees and incurring the cost.

Mr. HART. First, I would merely point out to the Senator from Louisiana, that there is nothing in this amendment which requires hiring any additional employees. Many of these tasks can be contracted out to separate and private entities if the secretary desires. The argument concerning massive new employees is not really true.

Second, I believe the testimony before the Senator's committee also indicated the substantial regulatory, institutional, and even technological barriers to recovering and reusing our hidden waste heat energy resources.

UP AMENDMENT NO. 868

The PRESIDING OFFICER. The hour of 3 p.m., having arrived, the amendment of the Senator from Colorado is temporarily set aside, and the Senate will resume consideration of the amendment of the Senator from Massachusetts (Mr. KENNEDY) unprinted amendment 868. The yeas and nays have been ordered on division 1.

UP AMENDMENT NO. 874

Mr. ALLEN. Mr. President, I send an amendment to the Kennedy amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 874 to part 1 of the Kennedy unprinted amendment numbered 868.

At the end of Part 1 of the amendment add the following: "Any such order or any such rejection of such a filing shall be appealable by any such utility to the Federal District Court wherein the principal place of business of such utility is located and such order or such rejection shall not become effective until there has been a final adjudication of the issue in the Courts."

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, how much time is allotted to the Senator from Alabama?

The PRESIDING OFFICER. There are 30 minutes, and the Senator from Alabama has 15 minutes.

Mr. ALLEN. I thank the Chair. I send copies of my amendment to the desk, Mr. President. I might say the Kennedy amendment is not printed either. I believe few Senators have seen a copy of the Kennedy amendment. It injects something into the bill which is new, that is, in my judgment, nongermane.

It seeks to amend the Federal Power Act, which I believe is not referred to in the bill. It depends for germaneness, according to the Parliamentarian, on section 4 of the bill appearing on page 4, wherein it is provided:

SEC. 4. Nothing in this Act shall affect the applicability of the antitrust laws (as defined in section 3(9) of the Energy Policy and Conservation Act (42 U.S.C. 6202)) to utilities.

So this amendment to the Federal Power Act really is not germane to the bill.

Of course, we are under a time agreement of, I believe, 1 hour for each amendment. I am appealing the Chair's ruling on the germaneness of the amendment.

Inasmuch as the amendment offered by the distinguished Senator from Massachusetts (Mr. KENNEDY) is not printed, and I rather imagine there are few copies of the amendment—as a matter of fact, someone of the staff said a moment ago he thought I had one of the few copies of the amendment available—I thought it might be well to read at least a portion of the amendment.

The amendment is in two parts. At the request of the Senator from Alabama the amendment has been divided. What we are considering is only part I of the amendment. That is, section 5(a). It provides:

General authority of the Commission—

Section 205 of the Federal Power Act is amended by adding at the end thereof the following:

(k) Whenever the Commission determines on its own initiative or upon complaint—

I have a later amendment to add when this one has been voted upon, and either agreed to or rejected, to knock out the words "on its own initiative." I do not believe the Commission ought to be going around all over the country nosing into various aspects of the handling of the business of companies engaged in this business, but to leave it to a complaint. If anyone should complain to the Commission, they could have a hearing, but it should not be on the Commission's own initiative. I think that is just carrying it a little too far to do that.

I was not knowledgeable to this amendment being offered so I am somewhat at a loss to understand such a far-reaching amendment of this sort. We will get to the far-reaching part of the amendment when we get to division 2, I might say. Well, that is a far-reaching amendment which I will explain at a proper time.

I am advised that this amendment, and if I am incorrect in this assumption, I am sure the distinguished Senator from Massachusetts (Mr. KENNEDY) will correct me as to the facts—I do not serve on the Energy Committee but I have been informed, I hope correctly—was not considered by the committee.

To offer a far-reaching amendment here on the floor where Senators are not advised as to its content—I just wonder how many Senators here have seen this amendment. For the edification of the Senator from Alabama, I wish all Senators who have studied this amendment would raise their hand, just for the information of the Senator from Alabama. I wonder how many Senators have read this amendment.

I hope for the information of the Senator from Alabama, all Senators who have read this amendment would kindly raise their hand.

Mr. CULVER assumed the chair.

Mr. JOHNSTON. Will the Senator from Alabama yield?

Mr. ALLEN. No, I want to ask a question, first. I am just asking how many Senators have read this amendment. I see the Senator from Massachusetts reading something there. Maybe he is reading the amendment at this time.

Mr. LONG. Will the Senator yield for a question at that point?

Mr. JOHNSTON. Yes.

Mr. LONG. Is it not correct that a similar provision is already in law with regard to existing nuclear plants? Is it not true that in some cases this amendment about antitrust has led to delays as long as 3 years, in one case, in the construction of a plant in Louisiana, as well as increasing the cost by somewhere around $200 million?

Mr. ALLEN. I understand that is correct. I did not have knowledge of the particular instance. I do have knowledge of something that happened in my own State where there was a long delay at a cost to the ratepayers of Alabama of some $10 million.

Something that is going to have such far-reaching effects, to be offered here on the floor of the Senate, without even being printed—when I asked for a show of hands of Senators who had bothered to read this amendment, had access to the amendment and read it, not one single Senator raised his hand.

Mr. LONG. Will the Senator yield for a further question?

Mr. ALLEN. Yes.

Mr. LONG. Is the Senator aware of the fact that an amendment similar or parallel to this one, relating to nonnuclear generating plants, was considered in greater depth in the House and rejected by a margin of 100 votes?

Mr. ALLEN. Yes, sir, it was defeated on the floor. My distinguished colleague from Alabama, Representative FLOWERS, led the fight, and it was soundly defeated on the floor.

I believe this amendment needs a little more consideration in committee. I think it might be well to initiate a move of this sort in committee. I am hopeful that we shall have the opportunity to have committee consideration of this important matter.

What section 2 does I shall get to later, if we ever get to it, but I fear we shall never get to section 2. That would apply to making fossil fuel electric generating plants subject to the same long delays that are applicable to atomic energy plants. We all know it takes some 10 years to get an atomic energy plant on line. I think that if we are going to try to put the same sort of delay over on fossil fuel, coal-powered generating plants, the person it is going to affect is the billpayer, the electric utility customer, because these charges are passed on to the consumer.

I do not know how it is in other States—I do, too. I know electric rates are going out the ceiling. That is the situation in Alabama. This $10 million cost that was added to the bills of the consumers of electricity in Alabama is something I do not want to see dupli-

cated here. That is what there is danger of having happen.

As I say, there are two parts to the amendment and this first does not seem to be nearly as bad as the second, but it is bad enough. The amendment of the distinguished Senator from Massachusetts, in part 1, provides that the Federal Power Commission, on its own initiative or upon complaint, can say that an electric utility is engaging in any unfair method of competition or that an electric utility has filed any contract, agreement, tariff, or schedule which would result in an unfair method of competition, and it shall issue an order prohibiting such unfair method of competition or reject such a filing.

The amendment the Senator from Alabama has offered would provide an end to this amendment, this part 1, would add to the section that any such order or any such rejection of such a filing shall be appealable by any such utility to the Federal district court wherein the principal place of business of such utility is located, and such order or such rejection shall not become effective until there has been a final adjudication of the issue in the courts.

I do not believe, Mr. President, that the Federal Power Commission, sitting in august splendor in its ivory tower in Washington, should say that an electric utility in my State or in any Senator's State is engaging in unfair competition. Most of them are, more or less, monopolies, except for the REA co-ops. That is what a utility is; it is governed by a regulatory body and its rates are controlled. So I guess that, in some instances, it is a near monopoly. But if the Federal Power Commission, on its own initiative, made this finding after the evidentiary hearing we speak of here, it does not provide anything in here for an appeal. We might say, well, under the general law, an appeal is provided for. But I do not know if that is correct or not. All this amendment that I have offered would provide is that this order of the Federal Power Commission is stayed pending appeal. If it works out that the courts find that that was a proper finding on the part of the Federal Power Commission——

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. ALLEN. I am sorry, Mr. President. I had some other facts I wished to bring out, but I shall not ask for more time. Possibly on another amendment, I can bring out the same points.

I thank the Chair.

Mr. KENNEDY. Mr. President, I listened with some interest to the arguments of the Senator from Alabama about the consideration that has been given to this particular amendment by Members of the Senate. The Senator from Alabama neglected to mention that this issue was considered by the Committee on Commerce. A similar provision reported out of the Commerce Committee last year in its utility bill. So to suggest on the floor of the U.S. Senate that this is wholly new matter that has never before been considered ignores the work of one of the important committees of the U.S. Senate. And it ignores the fact that the provision was accepted by the members of that committee. And of course, the same language as my amendment was considered in the appropriate House committees.

I should like to consider the amendments that the Senator from Alabama offers. In part 1 of the amendment in which it strikes "on its own initiative," it seems to me that this would be acceptable. I should like to talk briefly about all three amendments and then get to some comment by the Senator from Alabama.

It seems to me that his first proposal retains the opportunity for independent utilities to raise the issues of competition, which they agreed were basically the issues in the Alabama case. There, the Alabama Power Co. refused to coordinate its bulk power supply with Alabama Electric, a cooperative, when it performs in coordination with other utilities. That is a clear violation, in terms of discrimination and refusal to deal, of the antitrust law.

Second, it attempted to get the cooperative to agree on territorial allocations, clearly an unlawful territorial allocation. The third was a requirement in the contract that all or none of the power purchased at wholesale come from Alabama Power—a sole source requirement—which the cooperative was unprepared to do.

All of those three incidents were actually clear violations that were determined by the Attorney General and NRC. But irrespective of those particular factual situations, directing attention to the amendment of the Senator from Alabama, I think his first recommendation, that strikes the words "on its own initiative," does not do injury to our objectives and could be accepted.

A second amendment suggests that any of the regulatory rulings of the Commission could be appealed to the Federal district court. I think that could be acceptable if it were to go to the court where Federal Power Commission appeals regularly go, which is not to the district court but to the courts of appeals. I would be willing to consider those two amendments of the Senator from Alabama acceptable.

The third one, of course, is his amendment that says that a Federal regulatory decision would be appealable to the State regulatory body.

Now, as the chairman of the Separation of Powers Subcommittee understands, that is not done in terms of any regulatory law. It basically offends the supremacy clause of the Constitution. So it would be unacceptable.

But I would be willing to accept those first two amendments and also to ask unanimous consent to include as an additional modification that would say, "nothing in this subsection would empower the Commission to require an electric utility to delay construction of any plant."

The fact of the matter is, Mr. President, that there is no power within the Federal Government to license the construction of nonnuclear facilities. So the argument that is made here that it will delay construction is basically a specious argument, because there is no Federal authority at the present time in existence.

So it is basically raising a strawman and then trying to dispose of it.

I think this could, in fact, expedite any question that might be raised in the whole area of competition by establishing a procedure where these issues can be resolved administratively. It could actually move the whole process much more expeditiously than protracted litigation.

So if the Senator from Alabama would consider this as a counterproposal, then I would be willing to ask that the amendment so reflects those two amendments of the Senator from Alabama, as well as my additional modification, and to ask that it be taken to conference and to permit the conferees to consider the proposal.

I would be glad to yield a couple of minutes to the Senator from Alabama if he needs it to reply to that proposition.

Mr. ALLEN. I appreciate the suggestion of the distinguished Senator from Massachusetts.

I think that the amendments that I have offered, and that seem, in general, to be acceptable to the Senator from Massachusetts, would improve part 1 considerably. I would feel that if part 1 were the only part involved that we could reach agreement on this.

I wonder if the distinguished Senator from Massachusetts would be willing to take Part 1 as so amended, and we could work out the amendment in proper language, and then if he would withdraw part 2 and take part 1 to conference.

Mr. KENNEDY. The fact is, Mr. President, although part 1 is a reaffirmation and probably a clearer statement of the antitrust authority presently in the Commission, the part 2 obviously provides new procedures by which it can be carried forward with no delay in construction.

It is always nice to see those words on competition and to breath some life into them, but part 2, obviously, provides the mechanism by which Commission authority can be implemented and, with the additional amendment that I was prepared to offer, I do believe that it meets the objection of delay, which is the concern of the Senator from Alabama.

Mr. ALLEN. That is one of the concerns.

I would like to inquire of the distinguished Senator, he states that this, similar language, was reported out of the Commerce Committee as part of some of its legislation. I would like to ask him what has become of it, if it was in that legislation, why is it necessary to encumber this bill with that language that was approved by the Commerce Committee and reported to the floor? Why duplicate the effort?

Mr. KENNEDY. I answer the Senator that, as the Senator understands, S. 3311 was never considered by the Senate. It was reported out in October 1976. The Electric Utility Coordination Act, S. 3311, to amend the Federal Power Act.

Mr. ALLEN. Is it still on the calendar?

Mr. KENNEDY. I do not believe that there has been action by the Commerce Committee this year.

Mr. ALLEN. I understood the Senator to say it had been reported out.

Mr. KENNEDY. By the committee last year.

Mr. ALLEN. I see.

Mr. KENNEDY. As the Senator understands, it is a new Congress.

But I would refer under this particular bill that was reported out, the provisions of section 205, regarding unfair methods of competition, where it spells out procedures which are virtually similar to the provisions which have been included in the first part of this particular amendment.

Mr. ALLEN. Obviously, the amendment did not have overwhelming support in the Senate if it died on the Senate calendar. I just do not feel——

Mr. KENNEDY. The Senator remembers the long discussion we had on antitrust legislation that took many weeks in this body and ate up a great deal of time. The Senator must remember that.

Mr. ALLEN. Yes.

Mr. KENNEDY. Informed and prolonged discussion and debate that we had on it.

Mr. ALLEN. In that bill, or another, not reached, because of that discussion?

Mr. KENNEDY. I think a few matters got prolonged discussion, and that was certainly one of the reasons that this bill was not considered.

But, in any event, it was considered and acted favorably upon by the Commerce Committee.

Mr. ALLEN. I appreciate the Senator's kind offer, but we will doubtless have other amendments to this same part.

But as soon as time has been yielded back, I am going to suggest the absence of a quorum, Mr. President, in order that we might have an opportunity to see which we might agree on and then go on from there.

But I am not saying other amendments will not be offered to part 1, and, certainly, a multitude of amendments need to be offered to part 2, if we ever get to that.

Mr. EAGLETON. Will the Senator yield?

Mr. ALLEN. I do not have any time.

Mr. JOHNSTON addressed the Chair.

Mr. EAGLETON. May I ask a question?

Mr. ALLEN. I was speaking on the time extended to me by the Senator from Massachusetts.

Mr. EAGLETON. When the Senator said he would suggest the absence of a quorum, in that time could I call up an amendment, and then I intend to withdraw it, and to use that time to advantage?

Mr. ALLEN. And then the Senator will put in a quorum call?

Mr. EAGLETON. Yes, but——

Mr. ALLEN. I would have no objection to that, if the Senator from Massachusetts would not.

Has all time been used?

Mr. JOHNSTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. There are 2 minutes remaining on the Allen amendment No. 874.

Mr. ALLEN. Has all time been consumed, Mr. President?

The PRESIDING OFFICER. Two minutes remain on the amendment.

The Chair would like to advise the Senate, in the event that perfecting amendments are accepted, it will require unanimous consent for such purposes in view of the fact that the yeas and nays have been ordered, if they are accepted as modifications.

Mr. ALLEN. Yes. But I suggest we have to decide the wording, if that has not been agreed upon yet, and I have no objection to continuing with the yeas and nays, for that matter.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I yield myself 3 minutes on the bill.

Mr. President, when this matter initially came up this morning, I advised the Senator from Massachusetts that, while we had had no hearings on this matter and while we were not intimately familiar with it, we were constrained to accept the amendment.

I also indicated sometime later, after having made that statement, that information had come to me that this amendment might work a delay on the contruction of powerplants. Indeed, I must say that some constituents from Louisiana who speak with a particularly persuasive voice indicated that it would work a great delay in my own State.

Mr. President, that may or may not be true, but it is at least persuasive evidence enough to convince me and I think the committee that at this time, without hearings, this matter should not be enacted. I hope the distinguished Senator from Massachusetts will be willing to consider pulling the amendment down and having early hearings on this matter, so that we can give full attention and full emphasis to the matter of antitrust, which presently governs the construction of utility plants.

I should not that S. 2114 has a specific provision saying that nothing in this bill shall affect the applicability of the antitrust laws to utilities. And nothing in this bill takes away power from the FPC with respect to the construction of electric powerplants or with respect to anything else pertaining to this bill.

So there is in the present law a definite authority and mandate to the FPC to monitor the construction of these plants. I hope that existing Federal authority would be sufficient, so that we could come back at a later time and have hearings on the matter and consider it fully.

However, for the time being the committee would have to oppose the amendment in chief. We take no position on the Allen amendments.

Mr. KENNEDY. Mr. President, I am glad that we are hearing from the various utilities, whether it is Alabama Power & Light or Louisiana Power & Light. The fact is that I speak also from experience, where we found the major utilities trying to squeeze out the smaller municipals and public power firms in our own region of New England.

I do not have the intention to delay this bill. I hope that, if we can get the changes on the first part——

The PRESIDING OFFICER. All time has expired on the Allen amendment.

Mr. JOHNSTON. Mr. President, I yield the distinguished Senator 3 minutes on the bill.

Mr. KENNEDY. I would be glad to make the change on the first part, according to two Allen amendments, and hope we could get a voice vote, if there is no objection, and have a yea and nay vote on the second part.

In the remaining time, I wish to indicate what the Commerce Committee said in terms of their section 230. This is in section 205, talking about the Federal Power Act:

Section 205 of the Federal Power Act (as amended by this Act) is further amended by adding thereto the following:

"(g) The Commission shall give due consideration to such evidence as may be provided in any proceeding before it with regard to whether the activities considered in the proceeding would create or maintain a situation inconsistent with the antitrust laws as specified in section 211 of the 'Electric Utility Coordination Act' and shall make a finding thereon. Whenever the Commission determines on its own initiative or upon complaint, after affording an opportunity for evidentiary hearing, that a public utility is creating or maintaining a situation inconsistent with the antitrust laws, or is engaging in any unfair method of competition, or that a public utility has filed any contract, agreement, tariff, or schedule which would result in an unfair method of competition, it shall issue an order remedying such situation inconsistent with the antitrust laws, or prohibiting such unfair method of competition, or rejecting such contract, agreement, tariff, or schedule. Section 201(f) shall not apply to this subsection.".

It was reported by the Commerce Committee.

We are not talking about NRC here, where utilities have to get Federal licensing. They do not where, for example, coal-burning plants are involved.

We want to get the Senate on record in terms of competition, and I am prepared to vote. I have no illusions as to what the outcome is going to be. I am prepared to vote. I have no interest in delaying the Senate, but these are the questions we will have to start dealing with in terms of competition.

It seems to me that we are either going to be serious about competition or we are not. We are going to have a number of opportunities to vote on this kind of issue over the next several years, and we might as well get used to voting on it.

I am prepared to expedite the handling of the matter. I appreciate the dilemma of the Senator from Louisiana, but I am prepared to see a vote, if the Members are.

Mr. ALLEN. Mr. President, will the manager of the bill yield me 3 minutes on the bill?

Mr. JOHNSTON. I yield the distinguished Senator from Alabama 3 minutes.

Mr. ALLEN. The distinguished Senator from Massachusetts spoke of hearing from the utilities involved. What he is hearing from is the consumers of this gas, because the Senator knows that a public utility is allowed to make a certain percentage of return on its investment. These added costs are not coming out of the companies' coffers, because they pass these costs on to the consumers, as the distinguished Senator knows.

So the imposition of a $10 million charge on the customers of the Ala-

bama Power Co., who are about 80 percent of the people of Alabama, on account of regulations such as this—that is the estimated cost of the delays under the atomic energy licensing bill, even though this particular installation in Alabama was grandfathered in and was not supposed to be subject to all these delaying tactics.

So, Mr. President, what we are appealing for is the people, rather than the companies. I certainly want that understood.

I yield back the remainder of my time, and I suggest the absence of a quorum.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold?

A vote now properly should occur on the Allen amendment.

Mr. JOHNSTON. Mr. President, I heard some suggestion that we vacate the order for the yeas and nays.

Mr. KENNEDY. On the first part of the Allen amendment.

The PRESIDING OFFICER. The yeas and nays have not been ordered on the Allen amendment.

Mr. ALLEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, a point of inquiry: Are there to be back-to-back votes in this matter? Has an order been issued to that effect?

Mr. ALLEN. Not back-to-back votes, because the Senator from Alabama has a series of amendments to offer, and he probably is going to request the yeas and nays on all of them. So there will be an intervening period between votes, because part 1 needs to be amended in several particulars.

I hope the distinguished Senator from Massachusetts will follow the suggestion of the manager of the bill, that this bill not be encumbered with this provision and that the bill be allowed to proceed, so that it can go to the other body without this surplusage added.

Mr. KENNEDY. Mr. President, given the attitude of the Senator from Alabama, I feel constrained to object to intervening business until we are able to get consideration of these amendments.

I have indicated that I would take two out of three of his amendments and that I am prepared to vote. If we are going to get into a different situation, I would feel constrained to insist this particular issue, that we reach a final resolution of it.

Mr. JOHNSTON. Mr. President, has the Senator from Massachusetts agreed to accept the pending Allen amendment?

Mr. KENNEDY. I have indicated what the position would be, that I would be willing to accept two of the three Allen amendments and ask unanimous consent to modify the provisions with respect to the Commissions initiative and in terms of appeal of the decision to an appropriate court, the circuit court, and then offer my additional amendment.

I would be prepared to, but, obviously, we are not even then going to get to a vote. There is very little incentive on my part to agree with the Senator from Alabama because apparently it will not do very much good even if we make those kinds of adjustments.

Mr. ALLEN. I did not accept the generous offer, and I say that in all sincerity, the generous offer of the Senator from Massachusetts to accept two out of the three amendments and then add one of his own because I understood he would have tacitly, or if I had accepted it I would have tacitly, been agreeing to a final vote on part 1 of the amendment, and I was not willing to agree to that, I will say to the distinguished Senator from Massachusetts. Therefore, I did not accept his generous offer. I would ask for rollcall votes at the proper time on my amendment.

Mr. JOHNSTON. I wonder, Mr. President—I yield myself 1 minute on the bill—if the Senator from Alabama has considered the fact that both the majority and minority are opposed to the amendment and, with that in view, whether he thinks it might not be better to let the amendment as proposed to be amended by the Senator from Massachusetts go straight to a vote. I would suggest to him that that may be the best way to achieve——

Mr. ALLEN. The manager of the bill, of course, has it within his authority to move to table part 1, and I would hope he would do that. But the Senator from Alabama does not want to do that. I would feel that coming from the distinguished manager of the bill, supported by the distinguished minority manager, it would have a whole lot more weight with the Senate than coming from the Senator from Alabama.

Mr. JOHNSTON. Mr. President, parliamentary inquiry. The request for the division has been granted on part 1 and part 2?

The PRESIDING OFFICER. That is correct.

Mr. JOHNSTON. And that would adhere also to a motion to table which would have to be subject to a division as well?

The PRESIDING OFFICER. The Senator could only move to table on an individual basis due to the fact it has been separated.

Mr. JOHNSTON. I wonder if the Senator from Alabama would withdraw his request for a division and let us have a tabling motion on the entire thing?

Mr. ALLEN. It has already been divided, and I would not wish to recall the motion because if the motion to table fails then the Senator would not be allowed to ask for a division. It would just take two motions to table, I will say to the distinguished Senator. If he prevails in one he probably will prevail in the other.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I be allowed to move to table parts 1 and 2 of the Kennedy amendment, and that the rollcall vote on part 1 be 15 minutes, followed by a 10-minute rollcall vote on part 2.

Mr. ALLEN. Reserving the right to object, the Senator seems to anticipate that his motion to table would not prevail. Why would he ask that there be rollcalls on the two parts if the motion to table carried? There would be no parts left.

Mr. JOHNSTON. If part 1 is tabled, then part 2 would still be in existence.

Mr. ALLEN. I understand the Senator asked to table both of them in one motion.

Mr. JOHNSTON. No. I really wanted a 10-minute rollcall on the second rollcall at the request of the Senator from Georgia.

Mr. ALLEN. On your motion to table, not on the amendment itself.

Mr. JOHNSTON. Yes. That is why I asked the Senator to withdraw his request for a division so that we could have one motion to table.

Mr. ALLEN. No, I would have no power to withdraw the request, and I would have no inclination to do so. The Senator would have the ability to move to table.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. No, I do not object to his request on the motion to table.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object, all you are asking is that you have two 10-minute rollcalls on your motions to table parts 1 and 2 of the Kennedy amendment; is that correct?

Mr. JOHNSTON. Fifteen-minute rollcall on part 1 to table and 10-minute rollcall on part 2.

Mr. ALLEN. Both your motions being motions to table?

Mr. JOHNSTON. That is correct.

Mr. ALLEN. I have no objection.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JOHNSTON. Does the Senator from South Carolina desire to be heard before I move to table?

Mr. THURMOND. Mr. President, I yield myself such time as may be required on the bill.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, this proposal by Senator KENNEDY, the distinguished Senator from Massachusetts, is an antitrust amendment.

There have been no hearings in the Subcommittee on Antitrust and Monopoly or in the Judiciary Committee on any bill containing the substance of his amendment.

First, I oppose his amendment as being prematurely brought to the Senate floor. It has not had the scrutiny of full and fair hearings by the institutions of the Senate established to do that job.

Second, I oppose it on the same grounds as were pointed out in the House of Representatives where it was stricken from the House energy bill, H.R. 8444, by a vote of 257 to 160.

Mr. President, I would like to read just a few excerpts from the statement by Congressman FLOWERS in the House:

Section 548—

Which is the same as the Kennedy amendment here—

provides that each time an electric utility company wants to expand its generating capacity, that company would be subject to

an anti-trust review by the Justice Department. The results of that investigation would then be turned over to the Federal Power Commission, which could take as much time as it wanted before making a determination.

At present such an antitrust review is required only when a nuclear powerplant is being proposed. This new section would provide for similar reviews for conventional fossil-fired electric generating plants, hydroelectric plants and even transmission lines.

It puzzles me, Mr. Chairman, that we are seeking to build in new delays into the construction process just at the time when we need the additional generating capacity as quickly as we can get it.

H.R. 8444 is a bill supposedly aimed at encouraging the conservation and production of energy. Why, then, should we include section 548—a section whose provisions would clearly inhibit the production of electric power?

Under the existing regulatory process, it takes from 7 to 10 years to build a fossil-fired plant. But if we add another layer of bureaucracy—together with a lengthy process of hearings and appeals—who knows how long it will take to build a plant?

I have not heard anyone promoting the present antitrust process in the nuclear area as a good model to follow. If section 548 remains in the bill and its provisions are enforced with the same degree of speed and efficiency as the current law affecting nuclear plants, we will all be in trouble.

I know firsthand of a case involving an electric utility company. This company first applied for permission to build a nuclear powerplant in 1969—a full year before the 1970 amendments to the Atomic Energy Act which established the antitrust review process.

Construction by the company was "grandfathered" in under these amendments, while the Justice Department's antitrust review proceeding for this one plant has dragged on for 7 years with no end in sight. Tens of thousands of pages of testimony and exhibits have been presented and nearly 200 days of hearings have been held but the issue still is not resolved.

The result is that this massive powerplant stands completed but unused. In the meantime, the company is spending nearly $2 million a week to buy power that otherwise would come from the plant.

Obviously, this delay is costing Alabama consumers dearly. I do not know which situation would be less costly—not to have constructed the plant—or to have constructed it under these circumstances.

Mr. Chairman, I think the case against section 548 is overwhelming. If we allow this section to remain in the energy bill, we will mandate long delays in the construction of powerplants, we will slow down energy production, we will sentence our people to paying even more for electricity, we will create unemployment in the construction industry and we will overburden our regulatory system.

Mr. President, those are some excerpts, as I stated, from Congressman FLOWERS' statement in the House.

An excerpt from a statement by Mr McCLORY of Illinois on this subject in the House of Representatives:

I hope and would expect that with respect to any substantial plant expansion the Antitrust Division would have information and could get information. They could utilize the civil investigative demands—CID's—for which we have provided. Of course, information is freely available as between the various agencies of the great bureaucracy. However, to require with respect to every substantial expansion of a utility that it would have to, first of all, wait and then be confronted with the suggestion that here is an antitrust violation or prospective antitrust violation would seem to me to be inconsistent with what we are trying to do.

Mr. President, an excerpt from a statement of Mr. WIGGINS in the House of Representatives:

Mr. Chairman, a long time ago it used to be lawful to engage in any conduct, commercial or private, unless it was explicitly against the law. That maximized our freedom. We could pretty well do whatever we wished unless the law made it illegal to do so.

However, in recent years, we have been moving in a different direction. It is now not enough that one should be in violation of the law. Now we are asking Government to take a look at our conduct prospectively and make a determination as to whether our plans—and now I quote those exquisitely vague words in the bill—"may create or maintain a situation inconsistent with the anti-trust laws."

Mr. President, another excerpt from Congressman WIGGINS' statement:

The language contained in this bill is not unique. It merely reflects a growing trend in other legislative areas to have prior review by the Attorney General with respect to the antitrust laws.

That is not good policy. People should not have to go to a police agency to expose their plans and ask for an advisory opinion as to whether or not it may be inconsistent with the law. If you do that, the chief of police, or, in this case, the Attorney General, will surely give his advice. He will say that the plan is all right, but—and then make some suggestions which, of course, one is afraid to disregard.

Mr. President, I think the excerpts from statements of the gentleman who handled this bill in the House of Representatives are self-explanatory. As I say, the House killed this amendment 257 to 160, and I hope the Senate will do likewise here.

Mr. JOHNSTON. Mr. President, I yield myself 3 minutes on the bill.

Mr. President, I suggest to the distinguished Senator from Massachusetts that what he wants to accomplish in this bill is basically provided for under the present law. Under the existing law in cases the FPC, from which the FERC derives its power, has authority and, in fact, the duty to take competitive matters into consideration right now, and we recognize that they have that power and duty. The FPC and, in turn, FERC can presently consider and take action to prevent unfair methods of competition and to maintain situations consistent with antitrust laws and policies.

The FERC should be sensitive to antitrust issues and sensitive to competition under the present law. The Antitrust Division and private parties may still sue under the Sherman Act to enjoin or seek damages for violations of the law. So the amendment of the distinguished Senator from Massachusetts, while it would clarify certainly the Commission's powers and duties and it would standardize its procedures, in terms of powers it really does not vastly expand what the Commission should and can do under present law. We recognize that and we have no opposition to what the Senator wants to achieve in terms of anticompetitive examination and requiring FERC to be sensitive to these matters. Our opposition is simply based on the fact that it may work in some instances a delay. We are not opposing at all what we consider to be the substance of the Senator's amendment because that is already provided for, I believe, as we interpret it under present law.

Was the Senator aware that we interpreted the present law in that way?

Mr. KENNEDY. I think that is very reassuring in terms of the legislative history. It seems to me that that is a very helpful commentary about the role of competition in the decisionmaking of the Commission and I think that that is very important. It obviously was not our intention to delay the process of moving forward on this bill.

I wish to see if the committee or the staff of the committee would do a review of what the potential delays would be if a procedure similar to this were followed. I think that it would be useful if the Energy Committee did such a study, since that is, as I understand it, the principal concern that has been voiced here today. If we could get the staff to do a study and work with the Antitrust Subcommittee, and if I had the assurances of the chairman that he would work closely with us on matters relating to the competitive aspects of the industry, this would be helpful.

The Antitrust Subcommittee, under Senator HART, held extensive hearings on utilities in 1970. He found during the course of those hearings widespread violations of the antitrust laws. It is really against that record that I concluded this kind of language would be extremely important, valuable, and useful.

With the strong commitment that the Senator from Louisiana has given in the legislative history about the role of FERC in insuring that antitrust laws will be followed, and with the review by the staff of the delay issue, I am prepared to withdrew my amendment. I want to work closely with the chairman of the Energy Committee on the competitive aspects of these issues, with obviously the clear understanding that we will be able to address this again in the future. It is very clear to me that even if we were successful in winning against the tabling motion, we are going to have amendment after amendment after amendment to confront. This is obviously a key part of the administration's program and I won't hold it up.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. KENNEDY. Mr. President, will the Senator yield me another minute?

Mr. JOHNSTON. I yield the Senator another minute.

Mr. KENNEDY. It does seem to me, if that is agreeable with the Senator from Louisiana, I would be willing to ask consent to withdraw the amendment.

Mr. JOHNSTON. Mr. President, we would certainly be glad to work with the Senator and have the staff make that review and we would certainly work very closely with his staff in so doing.

I concur with everything the Senator says about the need for these antitrust examinations. I also concur that we have not done this very assiduously and consistently in the past. That has not been, in the view of the committee, because of

a lack of authority, but because of a lack of either resources or will to make those investigations and inquiries. So we would certainly first accede to what the Senator wants in terms of a study and, second, agree with him that the present law provides the framework within which this can be done, given the will to do it.

Mr. ALLEN. Mr. President, will the Senator yield me 1 minute?

Mr. JOHNSTON. I yield 1 minute.

Mr. ALLEN. I thank the Senator.

Mr President, I have the honor of serving with my distinguished chairman on the Antitrust Subcommittee of the Committee on the Judiciary, and I want to assure the distinguished chairman that I, too, will study this question in more detail, so that I will be able to discuss it more fully when the matter comes to the floor.

Mr. KENNEDY. I would expect no less, Mr. President.

I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendments are withdrawn.

Mr. JOHNSTON. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The question now recurs on agreeing to amendment No. 873, offered by the Senator from Colorado.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EAGLETON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1414

(Purpose: To reaffirm intent of Congress with respect to disposition of power and energy by the Southwestern Power Administration)

Mr. EAGLETON. Mr. President, I call up my amendment No. 1414.

The PRESIDING OFFICER. There is an amendment pending at the desk that has been called up. It would require unanimous consent to withdraw the amendment presently before the Senate.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senator from Missouri be permitted to call up his amendment at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. EAGLETON) proposes an amendment numbered 1414.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

One page 16, between lines 17 and 18, insert the following new section:

"SOUTHWESTERN POWER ADMINISTRATION

"SEC. 15. The Congress hereby reaffirms and directs that power and energy marketed by the Southwestern Power Administration pursuant to section 5 of the Act of December 22, 1944 (16 U.S.C. 825s), shall be sold at uniform systemwide rates, without discrimination between customers to whom the Southwestern Power Administration delivers such power and energy by means of transmission lines or facilities constructed with appropriated funds, and customers to whom the Southwestern Power Administration delivers such power and energy by means of transmission lines or facilities, the use of which is acquired by lease, wheeling, or other contractual agreement. In no event shall agreed points of delivery be changed unilaterally.

On page 16, line 19, strike out "SEC. 15." and insert in lieu thereof "SEC. 16.".

Mr. EAGLETON. Mr. President, the purpose of my amendment is to clarify and reaffirm the intent of Congress with respect to marketing of Federal hydroelectric power by the Southwestern Power Administration under the Flood Control Act of 1944.

The act authorizes the Secretary of the Interior, in the alternative, to construct transmission lines "from funds to be appropriated by Congress" or to use the transmission lines of other utilities to transmit hydroelectric power, that is, the Secretary "is authorized to—acquire, by purchase or other agreement—transmission lines and related facilities."

In implementing the Flood Control Act and other similar acts, the policy of Congress always has been to encourage the Secretary to contract with other utilities to use their transmission lines, rather than to construct transmission lines with appropriated funds. And our policy always has been that rates to ultimate customers should be uniform and nondiscriminatory, whether the power is transmitted over Government-owned lines or lines made available by contract or lease. This is the concept of "postage stamp" rates—uniform rates for power delivered to load centers, regardless of the nature of the transmission lines' ownership.

The State of Missouri represents an example of the policy of Congress. In the 1950's and 1960's, Congress decided not to appropriate funds for constructing transmission lines in Missouri, but instead Congress directed the Federal marketing agency—the Southwestern Power Administration—to lease the transmission lines of privately owned electric utilities and rural electric cooperatives, paying rentals adequate to carry operating costs and debt service of the money which the cooperatives borrowed from REA. Thus, we were spared the necessity of appropriating millions and millions of dollars to construct transmission lines.

That is how the matter stood until 1970 when the Nixon administration, taking note of growing SPA deficits, ordered a special transmission charge levied on Missouri cooperatives above and beyond the basic SPA rate charged everywhere else.

The rationale was that the payments made by SPA for lease of the Missouri lines was a cost, and since the agency was charged by law to recover all costs, it was only appropriate to offset the lease payments by levying a transmission charge on the cooperatives receiving those payments.

The net effect of this circular argument is that Missouri cooperatives are providing transmission service free of charge to SPA. In the other States served by SPA, transmission lines either were built with Federal funds or leased from private power companies, but no special cost-recovery charge is levied on customers. Only in Missouri has that been the case.

To add to the inequity, Missourians continue to pay the basic SPA rate which is designed to recover all costs of the system, including amortization of the Federal investment in transmission lines outside of Missouri. In short, Missourians are helping to shoulder the cost of delivering power to other States but are being asked to assume the total cost of delivering SPA power in their own State.

The discriminatory transmission charge would increase the cost per kilowatt to Missouri cooperatives more than 60 percent above the price per kilowatt charged to users of peaking power in other States.

Commitments made by SPA to deliver power to all customers at the same basic rate without distinction as to whether the users were served over Government-owned or Government-leased lines were simply ignored. The long history of congressional approval of the arrangement between SPA and Missouri cooperatives was shunted aside.

With the imposition of the transmission charge, SPA effectively relieves itself of its obligation to compensate Missouri cooperatives for use of their transmission facilities. The cooperatives, however, remained obligated to repay the REA debt which they incurred to build the lines for SPA.

My amendment will remove this discrimination and assure equal treatment for customers in all States in the Southwestern Power Administration system.

Mr. JOHNSTON. Mr. President, we are conversant with the problem that the Senator from Missouri speaks of. It involves what at least on first appearance seems to be an injustice, and what appears to be the kind of ratemaking which is discriminatory against those within the postage stamp area by requiring to be included in their rate base the cost of delivering the power to them. On first impression, without looking deeply into the matter, it seems to be a case calling for some kind of legislative correction.

However, Mr. President, this matter has been in litigation, and because of that fact, and also because of the fact that we are not intimately familiar with all the facts, and we do feel that there should be a hearing within which all parties are allowed to explain their views, we would suggest to the Senator from Missouri that we would bring the matter up for hearings early next year. I would think we could do that in a 1-day hearing, and then I would guess that the committee would be inclined to react favorably to the legislative request.

So if the Senator would be willing to withdraw the amendment at this time, I can assure him that the committee will hold those hearings.

Mr. EAGLETON. Mr. President, I

thank the distinguished floor manager for being eminently fair. This is a complicated matter. To me it is a very inequitable situation, but it is not the kind of matter that can be gone into ab initio on the Senate floor. I realize the position of the Senator from Louisiana.

Thus, with his assurance that he himself, very early next year, would be willing to preside at a 1-day hearing where this matter could be ventilated with the Southwestern Power Administration and other interested parties, I think that is a very fair response, and since the Senator has been so obliging in that promise, I will withdraw amendment No. 1414.

Mr. JOHNSTON. I thank the Senator.

Mr. BARTLETT. Mr. President, will the Senator delay that withdrawal until I can be recognized to make a very brief statement?

The PRESIDING OFFICER (Mr. BAYH). The Senator from Oklahoma.

Mr. BARTLETT. It is my understanding that the problem the Senator addresses has been adjudicated in the courts, and that the different prices that have been charged by the Southwestern Power Administration in Missouri, and I think partly in Oklahoma, have been upheld by the courts.

I certainly have no objection to the hearing. I think that it would yield useful information. I am pleased the Senator is withdrawing the amendment, because I think it is a complicated issue. It does impact on our State and I certainly would otherwise have opposed the distinguished Senator from Missouri in his amendment.

I am not as familiar with this as I would like to be, but I did want to say that I certainly agree that it would be wiser for us to proceed rather slowly than to jump into this right now and adopt this amendment.

Mr. EAGLETON. The Senator is correct as far as this matter having been subject to litigation in the courts. The court found with the REA's. The court of appeals said they were not able to fully ascertain congressional intent and they did reverse the district court finding. We believe that congressional intent is clear. The district court is almost imploring us to, with greater specificity, detail through legislation what our actual intent is. That we would seek to accomplish early next year by the hearing and subsequent legislation which may come out of that hearing.

Mr. BARTLETT. I thank the Senator from Missouri. I am pleased that a hearing will be held.

Mr. EAGLETON. I thank my colleagues from Louisiana and Oklahoma.

Mr. President, I withdraw amendment No. 1414.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 873

The question recurs on amendment No. 873, an amendment of the Senator from Colorado.

Mr. HART. The amendment which I offered earlier, unprinted amendment number 873, was being discussed with the Senator from Louisiana when we were interrupted by a previous order. I merely want to summarize where we stand by saying that I do not believe the provisions of the committee-reported bill itself are specific enough to answer the questions which need to be answered—of a technical nature, of a jurisdictional nature, of an economic nature—to permit this country to enter into the kind of cogeneration and waste heat recovery to save literally tens of billions of dollars for the consumers in the next couple of decades—let alone the enormous amounts of energy we will save.

The specific direction which this amendment gives to the series of very nominally priced studies to be conducted by the Administration, the Federal Trade Commission and the Environmental Protection Agency is absolutely imperative to afford us the necessary detailed understanding of the issues so that we can enact a coherent, comprehensive National Waste Heat Recovery Policy, in a year or two that will be able to last for some time without major resolutions.

I believe that position is supported by documentation provided us by ERDA and by the Administration. I am hopeful that the Senator from Louisiana will accept this amendment. The Senator from Colorado, as sponsor of the amendment, is not absolutely adamant as to the amount of money contained in the amendment. I think if we got these studies underway and continued the funding in the next fiscal year, we would get the detailed understanding we need in order to legislate properly. I am completely amendable to suggestions from the floor manager as to what the dollar figure should be for the studies in the amendment.

Mr. JOHNSTON. Mr. President, as I said in my opening remarks, we very much support cogeneration and doing what is necessary. I have just talked to my Republican counterparts on the committee. After that conversation we are prepared to accept a total of $2.5 million, if that would be sufficient to the Senator from Colorado. That is, $.5 million for each of the three-year studies and $1 million for ERDA. In the opinion of the Senator from Colorado, would that be sufficient to get this matter going?

Mr. HART. I appreciate the cooperation of the manager of the bill, though his suggestion is certainly far short of what we had contemplated. To the degree this offer of compromise would not prejudice the future funding of these studies in the next fiscal year, or in any way suggest that they could be done solely for that amount of money, I think the Senator's suggested funding level would get the studies off the ground, get them going, and lead to the kind of data base which will be necessary to approach this problem in a comprehensive and long-lasting way in the future. Of course, I would like a few more dollars for this, but I think that the Senator's suggested modification is certainly better than nothing. I will accept it.

Mr. JOHNSTON. I thank the distinguished Senator from Colorado.

One of the things we need to study is how much proliferation there is of the studies of cogeneration throughout the various Federal departments. This amount of money will get started with those studies. If we find there is not too much proliferation we may well want to come back later and increase these amounts. This recognizes the principle of what the Senator wants to have done and allows for the structure of the study which he provides for. It does get those studies started. I thank the Senator from Colorado.

Mr. HART. I totally agree that the Secretary's first priority should be to compile and provide easy public access to the information that is already available. This problem is one we have all run up against on this issue, and I commend the Senator for his good sense of priorities.

Mr. BARTLETT. I would say to my distinguished friend from Colorado that I join with the manager of the bill. I am doing this a little reluctantly because I think it is important that the committee address matters such as this in great detail and after further study. I know the Senator contributes greatly on the committee when the ERDA authorization bill is before us. I think that is really the time and place to go into this kind of a problem, which is a very technical problem. It is hard to come up with any precise answer to the question he is presenting to us. I do join with the manager of the bill in supporting the $2.5 million.

Mr. HART. Mr. President, I ask unanimous consent that it be in order to modify the amendment in accordance with the terms of the manager of the bill.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The request is granted. Please send the modification to the desk.

Mr. HART. Mr. President, I move adoption of the amendment, as modified.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. JOHNSTON. I yield back the remainder of my time.

Mr. BARTLETT. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado, as modified.

The amendment, as modified, was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. BARTLETT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Doug Logan, of Senator STEVENS' staff, be granted the privileges of the floor during the debate and votes on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, will the Senator from Louisiana suggest whether it would be in order for the Senator from Colorado to call up his other amendment at this point?

Mr. JOHNSTON. I would not tell the

Senator who should come first. I know the Senator from Massachusetts has a series of amendments.

Mr. HART. The Senator from Colorado is prepared to go forward with his other amendment, if the floor manager wishes.

Mr. JOHNSTON. I would have no comment.

Mr. HART. Mr. President——

Mr. BARTLETT. Will the Senator withhold that for a unanimous consent request?

Mr. HART. I yield.

Mr. BARTLETT. I ask unanimous consent that Eve Dublin, of Senator BAYH'S be granted the privileges of the floor during all debate and votes on the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1399

Mr. HART. Mr. President, I call up amendment No. 1399 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an amendment numbered 1399.

Mr. HART. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 2, strike out "and".

On page 2, line 4, strike out the period and insert in lieu thereof a semicolon and "and".

On page 2 between lines 4 and 5, insert the following new subsection:

"(d) to provide an interim solution for the subsistence residential electrical needs of the elderly while Congress attempts to construct an equitable electric utility structure which adequately meets the needs of all classes of consumers;

"(e) to promote equity in electrical costing; and

"(f) to demonstrate the effects of lifeline costing on electric utility rate structures, consumption patterns, and the operation of electric utilities, and to demonstrate the feasibility and desirability of action by Congress to extend lifeline costing to other segments of our society.".

On page 16, between lines 17 and 18, insert the following new sections:

"LIFELINE RATES

"SEC. 15. (a) No rate of an electric utility shall provide for a rate under which the charge per kilowatt-hour to an elderly residential consumer for a subsistence quantity of electric energy in any month for such consumer's principal place of residence exceeds the lowest charge per kilowatt-hour to any other electric consumer to whom electric energy is sold by such utility (or any electric utility which controls, is controlled by or under common control with, such utility). Such rates shall not exceed the average of residential rates in effect on the date of enactment of this Act. The relevant regulatory authority shall consider seasonal and climatic variations as they affect electric consumption in determining the subsistence electric needs of elderly residential consumers.

"(b) For purposes of sections 15, 16, 17, and 18 of this Act, the term—

"(1) 'subsistence quantity' means the number of kilowatt-hours per month which the relevant regulatory authority determines is necessary to supply the minimum subsistence electric needs of elderly residential electric consumers at their principal place of residence for the following end uses: Heating, lighting, cooking, cooling, food refrigeration, medical, or other essential purposes as determined by the relevant regulatory authority;

"(2) 'elderly residential electric consumer' means an individual who demonstrates to the supplying electric utility for such individual that such individual is—

"(A) (i) at least sixty-two years of age; and

"(ii) the head of a household or principal income earner; or

"(B) (i) is receiving social security benefits from the Social Security Administration; or

"(ii) is receiving railroad retirement benefits from the Railroad Retirement Board;

"(3) 'relevant regulatory authority' means the regulatory body which has ratemaking authority with respect to electric rate schedules within its jurisdiction.

"ENFORCEMENT

"SEC. 16. (a) No electric utility may sell electric energy except in accordance with a rate schedule which has been fixed, approved, or allowed to go into effect by a regulatory authority. No regulatory authority may fix, approve, or allow to go into effect any rate schedule which violates section 15 of this Act.

"(b) If any person alleges that a regulatory authority's action, or failure to act, violates subsection (a)—

"(1) in the case of a regulatory authority which is a Federal regulatory authority (or which is a State regulatory authority whose action or failure to act is not reviewable by a State court of competent jurisdiction), such person may obtain review of such action or failure to act, insofar as it relates to a violation of subsection (a)—

"(A) in any statutory review proceeding which is otherwise applicable to such action or failure to act, or

"(B) if there is no such statutory review proceeding applicable to such action or failure to act, by commencing a civil action in the United States court of appeals for any circuit in which the utility sells electric energy, which court shall have jurisdiction to review such determination in accordance with chapter 7 of title 5, United States Code; and

"(2) in the case of a regulatory authority which is a State regulatory authority, such action, or failure to act, insofar as it relates to a violation of subsection (a)—

"(A) may be reviewed by any State court of competent jurisdiction, and

"(B) if such action is reviewable by such a State court, may not be reviewed by any court of the United States, except by the United States Supreme Court on writ of certiorari in accordance with section 1257 of title 28, United States Code.

"(c) Any individual found guilty of fraudulently misrepresenting his or her status as a residential electric consumer shall be punished by a fine not to exceed $5,000 or imprisonment for not more than three months or both.

"FEDERAL ASSISTANCE

"SEC. 17. The Secretary shall provide technical assistance, including grants, or such other financial assistance as he deems necessary and appropriate to State and municipal regulatory authorities to assist these bodies in the establishment of subsistence electrical standards for the elderly.

"REPORTING REQUIREMENTS

"SEC. 18. (a) The Secretary shall submit a report to Congress within eighteen months after the date of enactment of this Act on the effects of this Act on electric utility rate structures, electric consumption, and the operation of electric utilities.

"(b) Additionally, the Secretary shall study the extent to which cost-justified changes in rates will require incremental pricing (including but not limited to long-term incremental costing, peakload pricing, and so forth) whereby the incremental costs will exceed the average costs of electricity. In cases where the incremental costs will exceed the average cost of electricity, the Secretary shall study the extent to which subsistence quantities of residential electric consumption may be priced at lower levels, so that total revenues and costs are brought into balance.

"(c) The Secretary shall also study the extent to which such a pricing schedule would alleviate the difficulties which low-income residences experience in paying electricity bills.

"(d) The Secretary shall also study the impacts of such a pricing schedule on conservation efforts of all classes of consumers.

"LIMITED AUTHORIZATION OF APPROPRIATIONS

"SEC. 19. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 15, 16, 17, and 18 of this Act.

"EFFECTIVE DATE

"SEC. 20. The provisions of sections 15, 16, 17, and 18 of this Act shall take effect ninety days after the date of enactment and shall remain in force for a period not to exceed three years thereafter.".

On page 16, line 19, strike out "SEC. 15." and insert in lieu thereof "SEC. 21.".

On page 16, line 20, immediately after "out" insert the following: "sections 1 through 14 of".

Mr. HART. Mr. President, I call to the attention of my colleagues that the Senator from Minnesota (Mr. ANDERSON) and the Senator from Rhode Island (Mr. PELL) are cosponsors and supporters of this amendment.

Mr. President, the spiraling cost of home energy in recent years has created severe economic hardships for America's elderly—many of whom exist on low, fixed incomes. This amendment would reduce this burden by extending seniors a basic amount of electricity at the lowest cost afforded to any class of consumer.

Additionally, this initiative would require the new Department of Energy to expand on efforts currently underway to design electric rate structures which promote conservation, equity and economic efficiency and, at the same time, provide users with low-cost electricity.

I commend the members of the Senate Special Committee on Aging and the committee's distinguished chairman (Mr. CHURCH) for conducting extensive hearings on the impacts of higher energy costs on the elderly. In regional hearings held by the committee last March in my home State of Colorado, witnesses testified that higher utility costs may now be the greatest concern of older persons in that part of the country.

America's elderly now number over 28 million, or 13 percent of our population. In 1975—the most recent year for which accurate information is available—over half of the families headed by an older person had incomes of less than $7,300. Ninety percent of the elderly households had incomes of less than $10,000.

A more poignant statistic is the fact that nearly 7 million seniors exist below the poverty level. In 1975, one-fourth of the elderly families in America reported

incomes below $5,000, as compared to less than one-tenth of younger families.

Social security and other retirement income sources have not kept pace with increasing home energy costs. Between 1973 and 1976, social security payments increased by 30 percent. At the same time, energy costs for seniors increased by as much as 61.4 percent in the North-Central region of the Nation. The West experienced the smallest increase—a substantial 44.8 percent. Currently, the elderly spend 30 percent of their disposable income on home fuel expenses, whereas younger families spend less than 10 percent of their income on home energy needs.

Nearly 85 percent of the noninstitutionalized aged have at least one chronic ailment. Recent studies indicate that the inability to absorb higher energy costs can intensify health problems, particularly for the infirm or frail.

In general, seniors tend to be more frugal than other segments of our society in their consumption of energy. Many already practice energy conservation techniques and can do little more along this line to compensate for the higher cost of electricity and other home energy needs. In this light, it is not surprising that many seniors are forced to reduce their food purchases in order to compensate for additional energy costs.

Mr. President, current electricity rate schedules are scandalous from the standpoint of equity. Residential consumers may pay 4 to 5 cents per kilowatt-hour for electricity needed for their health and welfare, while large commercial and industrial consumers pay, on the average, less than half the residential rate—around 2 cents per kilowatt-hour. The declining block rate structure—which charges quantity discounts to those consumers who use the most electricity and the highest rate to those who use the least—is regressive and needs to be changed. This practice promotes wasteful consumption by commercial and industrial users, while residential consumers must bear a greater burden for price increases necessary to increase the electric utility's generating capacity.

This amendment would require utilities to extend a subsistence quantity of electricity to elderly residential consumers at the lowest cost that the utility affords to any class of customer. A "subsistence quantity" of electricity would be the minimum amount necessary for cooking, lighting, heating, medical, and other essential purposes as determined by State and local regulatory authorities.

Lifeline rates, as they are called, would be equivalent to the lowest rates in the declining block rate structure. However, this amendment is not intended to validate this kind of electric pricing. Rather, it would provide an easily-administered, interim solution to the well-documented problems faced by seniors in meeting high home energy costs while Congress addresses the larger issue of electric utility rate reform in the coming months and years.

Although there are wide variations in the price that customers pay for electricity in different regions, the Library of Congress estimates that my lifeline proposal would save seniors a national average of 40.8 percent on their electric bills. If every eligible senior citizen were to sign up for lifeline rates, approximately 2 percent of utility revenues would have to be redistributed among other classes of consumers. Clearly, lifeline rates for seniors would not create a significant burden for utilities or other classes of customers.

I am certain that my colleagues are interested in knowing whether a lifeline for the elderly program would be easy to administer and acceptable to the nonelderly. Lifeline rates have, to date, been the most commonly implemented rate reforms at the State and local level, and various lifeline for the elderly programs have already been proven successful in both large and small communities. There have been demonstration projects in States such as Maine, and ongoing programs elsewhere.

The city of Los Angeles instituted a lifeline rate in 1975. Senior citizens who have an annual income below $7,500 are eligible for a 50-percent discount over the regular domestic rate for an amount of electricity deemed essential for two adults.

We have an assessment of this lifeline program by Dr. Jan Acton, an economist at the Rand Corp. in California, who served on Mayor Bradley's blue ribbon committee to review the water and power rate structure for Los Angeles. His assessment of the Los Angeles program is that it has been easy to administer; that the number of elderly who have participated is about what was expected; that the elderly have definitely been helped; and that the other electric consumers in Los Angeles have strongly supported the program.

Another example of the success of lifeline for the elderly is the experience of Aztec, N. Mex.

This community of 6,400 initiated a "senior citizens" rate for electricity in January of this year. Any resident who is 65 years of age, the head of a household and whose annual income from sources other than social security does not exceed $3,000 per year is provided an unlimited quantity of electricity at the same rate as the city government pays—30 to 40 percent below the average residential rate. Some of the 90 individuals who have been accepted in this program were living on monthly fixed incomes of less than $100. The Aztec city clerk, who is solely responsible for administering the senior citizens' rate, records a universally favorable response to this program by members of this small community.

More often than not, however, individual States cannot afford to risk rate structure reforms such as lifeline. As Gov. Brendan Byrne of New Jersey testified before the Energy Conservation and Regulation Subcommittee, reform usually means higher energy costs for industry, and all too often industry will abandon States with higher energy costs for those with lower costs. A national lifeline program would alleviate the possible competitive disadvantages which might result from piecemeal action.

The second part of this amendment would require the DOE to explore an alternative electric rate design—long-run incremental costing. This design would generate revenues sufficient to extend a subsistence quantity of electricity to all residences at significantly reduced rates. Under such a plan, all consumers—large and small, residential and commercial—would pay the same price for electricity per kilowatt-hour.

This price would reflect the cost of expanding electrical generating capacity, which is considerably higher than the low rates charged to high quality users and slightly higher than the rates charged to others. As a result, quantity discounts for large consumers would be discontinued. The higher prices paid by all users would result in total revenues which exceed the total current costs of expanding electric generating capacity. These excess revenues would be distributed to consumers by reducing the price per kilowatt-hour for a subsistence quantity of electricity for all residential consumers.

In addition to providing relief for low-income consumers, this new rate design would do much to promote conservation of electricity. Residential consumers would have two electrical prices: A lower one for an amount up to their necessary consumption and a higher one for any larger amounts. As a result of the higher rates above needed amounts, consumers will perceive a greater reward for conserving electricity than is currently the case. Business and industry would be similarly inclined to conserve.

Recent forecasts by the U.S. Weather Service predict another cold winter for 1977–1978. Mr. President, we cannot in good conscience permit the elderly to endure another winter of cold and economic hardship. My electrical lifeline amendment addresses this critical need while Congress devises a comprehensive national utility rate reform policy.

Mr. President, because of a clerical error, Senator RANDOLPH's name was inadvertantly omitted from the list of cosponsors of amendment No. 1399, electrical lifeline for the elderly. This was a regrettable error and I would like to set the record straight.

Mr. President, Senator RANDOLPH has been an ardent supporter of the lifeline amendment adopted by the Senate earlier this week as part of S. 2114, the Public Utilities Regulatory Policies Act. I deeply appreciate his efforts on behalf of this proposal, which is certain to ease the financial burden that millions of senior citizens face in dealing with spiraling energy costs.

Senator RANDOLPH has long played a leading role in issues benefiting this Nation's elderly. Over the past many years, his accomplishments in this regard have won him wide acclaim both among his colleagues and the public at large. I commend him for his distinguished record and would again like to extend my gratitude for his strong support of the lifeline amendment.

Mr. President, I urge my colleagues in the Senate to support this amendment as a much-needed interim solution to what

is a substantial problem in this society among the senior citizens.

Mr. JOHNSTON. Mr. President, the subject of lifeline rates is fairly new in consideration in this country, but it is a subject and a concept which has received wide conversation and, I might say, among many groups, wide acceptance.

The concept is that elderly people, in the case of this bill, age 62 and older, in a day of ever-escalating utility costs should receive some relief.

With that concept, Mr. President, I, and I am sure the members of the committee, can very much agree, can enthusiastically agree.

But, Mr. President, the subject of lifeline rates when considered on a Federal basis, when considered on the basis of putting it in this bill, has two principal drawbacks.

The first drawback is the general strong feeling of the committee at this time that we should not depart beyond the bounds of energy conservation and consider other social ends, laudable though they may be, because we simply had so much work to do in the field of conservation during the past month that it was all we could do, having 7 o'clock and 8 o'clock hearings, to stay on top of the conservation issue, and that issue alone.

For that reason, we did not have hearings on the subject of lifeline.

The second feeling of the committee was that we were not prepared to inject the Federal Government into State regulation, not just because of the feeling of States' rights, but more importantly, because it would put a wild card into the proposition of ratemaking when we bring the Federal Government in and superimpose them on top of State regulatory authority.

State regulatory authority is a long way from perfect. It is full of fault, not only in its procedures, but in the substance of what they have ordered and in what many people regard as inequities in rates in various States around this country.

However, Mr. President, as many of the people involved in the bond market told us, when we inject Federal regulation, which makes the rate base of utilities unsure, as it would in this case, we might jeopardize the plans for expansion and for building of new plants.

For that reason, the committee took a very strong position that we did not want to inject ourselves at this time on the basis of the data which we had into the business of determining how States should regulate, I mean, what the rules should be for fixing their own rates in each State.

I think we will come back and consider that when we have more time to do so.

Is the Senator going to ask a question?

Mr. HART. If the Senator will yield, since we have some colleagues on the floor for that, I will ask for the yeas and nays.

Mr. JOHNSTON. Yes.

Also, Mr. President, on the motion to table.

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays on both at the same time?

The Chair hears no objection.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, that was the general philosophical view of the committee, philosophical and practical view of the committee, at the time when we were determining what to do about all kinds of different rate changes for State utilities.

When we get into the specific problem of lifeline rates, it is very appealing. But the Senator states in his amendment, for example, that people above age 62 would receive the lowest charge per kilowatt hour of any other electric customer to whom electric energy is sold by such utility.

Mr. President, there are all kinds of bulk rates by kilowatt hours for different customers. Some utilities have what are known as dump rates where they have, generally, an industrial plant which generates its own power, but which in times of excess power, unused power on the part of the utility, will take that utility's power at a very low rate and shut down its own generating facilities.

This would occur at times when there are offpeak hours, and that sort of thing, and would be on an interruptible basis.

These rates would be very low.

On its face, this has great appeal because, as I say, the old folks should not be charged any more than any other customer. But in this case, what the other customers might be taking is interruptible power, off peak power, and power that is sold in large bulk rates which would justify on a cost basis an extremely low rate.

Not only is that rate likely to be extremely low, it is likely to vary dramatically from utility to utility.

So what we would be doing here in this bill is telling each public service commission around the country that they have to adhere to that lowest rate, and they must give that low rate to these people 62 years of age or older and that then, in turn, they must charge all of their other customers 62 years of age and under a surcharge, in effect, to pay for the older people.

There are a lot of problems involved, Mr. President. There are a lot of these older folks, even though they are on social security, who might be very well to do and they would be getting a subsidization of their rates by people, say, on welfare, who would have to pay the increased charge.

What I am saying, Mr. President, is that the problem of lifeline rates is a difficult one which ought to be considered by each public service commission in each State, based on what they see is possible in their States.

They ought to make a study in their States as to what are the appropriate rates and who are the appropriate recipients.

I do not think at this time that this committee would be prepared to dictate to the various States that they come up with a requirement for a patchwork rate structure for lifeline rates that would result in the subsidization of people 62 years of age or older, whether they need it or not, by people 62 years of age and younger.

It is the kind of thing that really should be studied.

I ask the distinguished Senator whether he would consider changing this amendment into a study and perhaps have hearings on this subject in the Energy Committee next year. We simply do not have the data base to come in and require each State to go into these lifeline rates at this time. Would he consider such a study amendment?

Mr. HART. Let me respond to the Senator from Louisiana.

First, Mr. President, I cite the fact that endorsements of this proposal have come from the National Council of Senior Citizens, the National Association of Retired Federal Employees, the Urban Elderly Coalition, the Sierra Club, Environmental Action, the National Indian Council on Aging, the Seattle Department of Human Resources, and others.

Second, the Senator from Colorado is faced with a sort of Hobson's choice on the one hand in designing an amendment which would be simple to administer. Problems are raised of the sort which the Senator from Louisiana suggests as to elderly citizens who are well off. That is a small price to pay, I think, for giving absolutely necessary assistance to the more than 90 percent of the elderly who are not well off financially.

We could have designed a very complicated amendment that involved features of income levels and other factors that would have made this perhaps more equitable from the standpoint of windfalls to the wealthy elderly. However, at the same time, income requirements would have made lifeline extremely difficult to administer.

This is a straightforward qualification that can be met by a social security card or proof of age, which makes it easy for any State in the Union to adopt.

Second, by not establishing Federal standards except the age classification, the entire matter is left in the hands of the local and State utility commissions. So they can administer and apply this principle according to the rate structures of their own States. Of course, that makes a patchwork. Some people in one State will be paying less than people in others, and so on across the country. But this is the way our rate structure is applied now.

Rather than making a uniform rate structure, we have merely put the burden on the State utility and local utility commissions to permit those senior citizens to qualify for the lower rates.

The economic impact is not that great. It is 2 percent of all electric utility revenues, according to the Library of Congress. That 2 percent of possible lost revenue to utilities would be absorbed by the other 98 percent of the consumers.

I do not think that is going to be a substantial impact on the financial structure of utilities across this country. It cer-

tainly is not going to throw into doubt the rate structures of those utilities so that they cannot go out and have bond issues and float their financing for increased generating capacity, where necessary.

Consequently, I think the arguments which the Senator from Louisiana raises are interesting ones and might be important under other circumstances. But the fact is that as much as we might want to convenience the committee and not have it address issues which are outside the parameters agreed to in drafting this bill, old people are going to be cold this winter because they will not be able to pay utility prices. Just because it is easier to draw a boundary and say we are not going to adopt any amendments or proposals that affect the State utilities structures because it will be easier to get a bill through here, I do not think that is a valid justification to turn our backs on the senior citizens who are cutting back on their medical care, who are cutting back on their nutrition to provide enough electricity for their homes, their apartments, their cooking and other necessities of life.

These are real hardships, and I do not think it is appropriate for a Committee to decide that it is easier for us to set aside a whole category of issues to get a bill out of here, if we have to make people suffer another year or two in the process.

I think my lifeline proposal is a simple, straightforward approach to this problem. It will be easy to administer. It will not disrupt services. It will not disrupt financing of utilities, and it will not have substantial impacts on other consumers. Why not do it?

There are tens of millions of senior citizens in this country who are hardpressed, people to whom Congress and the Nation have an obligation.

I am not trying to get this amendment adopted on an emotional appeal. All of us represent the sovereign and individual States of the Union. We do not want to unduly influence State utility structures. But now is the time to act. We know this system and concept works in several States, in large and small communities. It is one that can be applied easily by every State or local utility commission in this country.

So my answer to the Senator's question about a study is that I prefer that we go forward and adopt this amendment, and I urge the committee to withdraw its opposition and not try to table this amendment.

I yield to my colleague from Colorado.

Mr. HASKELL. I thank the Senator. I congratulate him on putting forth this concept which, as he has stated, will benefit millions of elderly people across the country.

I particularly compliment him on the simplicity of the approach which is adopted here. I think we all realize—this is true in our State, and I assume it is true in other States—that the so-called fuel adjustment factor in the monthly utility bill sometimes exceeds the basic charge.

I believe we are all aware of the elderly people who have paid for their houses in the anticipation that they would live out their retirement in their homes. Now they find themselves, by virtue of utility charges, unable to occupy these houses and are forced to sell.

This is an economic problem, a social problem, and a human problem. Inasmuch as I am a member of the committee, I understand the desire not to place the Federal Government in a position of mandating rates to State utility commissioners. My colleague has adopted what I consider a very simple approach—one which leaves up to the PUC of each State the manner in which lifeline for the elderly is to be implemented.

Mr. President, I express my hope that the committee will find its way clear to accept the amendment. If it does not, I hope that a favorable vote will prevail in the Senate.

Mr. HART. Mr. President, I thank my colleague.

I ask unanimous consent to have printed in the RECORD a memorandum prepared by the Library of Congress, Congressional Research Service, dated October 5, 1977, directed to me, with respect to the modest economic impact of my lifeline proposal.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE LIBRARY OF CONGRESS,
Washington, D.C., October 5, 1977.

To: The Honorable Gary Hart. Attention: Lee McDermott.

From: Economics Division.

Subject: Lifeline rates for senior citizens.

A lifeline rate is defined as a minimum charge for a basic amount of electric service needed to supply the minimum needs of a consumer. The minimum needs usually include lighting, cooking and refrigeration but many also include water heating and space heating. Thus the number of kilowatt hours (Kwh) included in a lifeline rate vary considerably depending upon the number and types of electric appliances owned by the consumer. The minimum need would also vary according to regional climatic conditions.

The Bureau of the Census reports that for 1975 the total number of persons in the U.S. age 62 and older was 27,808,000 or 13.05 percent of the total U.S. population (excluding military overseas).

The Edison Electric Institute reports annual sales and revenues for the U.S. electric utility industry.[1] Those figures are reprinted in the attached table for 1975, the latest year for which data is available. While the exact impact of a lifeline rate on the utility industry would obviously depend on the amount of price reduction implemented through a lifeline rate, some estimate of the impact can be derived through the figures shown in this table. It should also be noted that these figures are an industry average. The effect of a lifeline rate on each particular utility would vary greatly depending on the amount of service (in kwh) covered by the lifeline rate (which would presumably vary from location to location due to the reasons stated earlier) and on the number of persons 62 years and older in each utility's service area.

If it is assumed that all electric service consumed by persons age 62 and over is purchased through a lifeline rate, and that amount of service is proportional to the percentage of the aged in the population as a whole, then 13.05 percent of total residential sales would be purchased at the lifeline rate. Using the data supplied in the attached table, this amount would be 76,492,444,000 kwh.

If it is further assumed that the lifeline amount of service is purchased at the average price of 1.92 cents per kwh (which is the average price for large ligh and power customers, and a reduction of 40.18 percent as compared to the average price for all residential customers) rather than at the 3.21 cents per kwh average price for residential customers, then the revenue produced from these sales would be $1,468,654,900. If this same amount of kwh were sold at the average price for all residential customers, $2,455,407,400 of revenues would result. The "loss of revenue" to the electric utility industry as a result of a lifeline rate for persons 62 years of age and older would then be $986,752,500.[1]

Total electric utility industry—Total energy sales and revenues by customers class, 1975

Total sales (millions of kilowatt-hours):	
Total sales to ultimate customers	1,733,024
Residential	586,149
Small light and power	418,069
Larger light and power	661,558
Total revenues (thousands of dollars):	
Total sales to ultimate customers	46,853,456
Residential	18,803,156
Small light and power	13,486,624
Large light and power	12,707,490
Average revenue per kilowatt-hour (cents):*	
Total sales to ultimate customers	2.7
Residential	3.21
Small light and power	3.23
Large light and power	1.92

[1] Of course the revenue "loss" would be made up through increased charges to the other utility customers.

*Revenue per kilowatt-hour is calculated from the EEI figures by dividing total revenues by total kilowatt-hour sold.

Source: Edison Electric Institute. Statistical Year Book of the Electric Utility Industry for 1975; tables 19–S and 33–S.

Mr. BARTLETT. Mr. President, I have been listening to my distinguished friend from Colorado—in fact both of my distinguished friends—and they have referred to this bill as a simple bill, and I would agree that it is a simple bill. But I think it is a complicated subject, and I think it is difficult to deal with this problem from the Nation's Capital for all the States without creating a lot of extra unfairness.

As an example, the Senator from Colorado, the junior Senator, said the utility companies can afford this. Well, the cost, of course, is going to be borne by the customers.

The utilities in our State right now are appearing before the Corporation Commission, the commission which regulates them, and they are seeking increases in the rates they charge their customers, and they are receiving increases in those rates. So the costs here would be borne by the customers and passed on to them by the utility.

[1] Edison Electric Institute, Statistical Year Book of the Electric Utility Industry for 1975.

This amendment applies benefits to the wealthy as well as to the poor. It is a welfare proposal not financed by the taxpayers but financed by the consumers, and some of these consumers are poor. The poor who pay rent, for instance, and in their rent are paying for their utilities, would be paying their share of the cost of this program.

I would like to point out that a study was made by TVA on lifeline rates, and in the sample of that study the lifeline rate produced higher electrical bills for 26 percent of the low-income families, those already facing hardships under the conventional rates and, at the same time, meant reduced electric bills for 49 percent of high-income families. In other words, this lifeline rate would have resulted in 26 percent of the low-income families helping to subsidize 49 percent of the high-income families, clearly a self-defeating result.

It is my understanding that virtually all of the State utility commissions have rejected lifeline, although not all of them. I point out, too, that this would affect the elderly irregularly even if we were dealing just with those who were poor.

For example, a couple living in a trailer using electricity for all their uses, including heat, would be more or less a high consumer of electricity; whereas another person who might live in a very snug home that was well-insulated and heated by gas would be a relatively low consumer of electricity.

The bill provides that the lowest charge per kilowatt hour to any other electric consumer to whom electric energy is sold by such utility, or any electric utility which controls or is controlled by or under common control for such utility, would be the governing rate. It also says such rates shall not exceed the average of residential rates in effect on the date of enactment of this act. That would mean it would lock in a ceiling at that level no matter what happened to inflation and escalating costs, and I think that would not be a good provision.

But I would point out to the distinguished Senator from Colorado that one area might have located in it a huge consumer of electricity, for instance a copper concern, that would get a very, very low rate. Other areas might not have such a low rate, so the rates charged would vary from area to area.

Then, I think, there are a lot of other variables that need to be considered, the matter of climate, the matter of the number in the family, the size of the house. All these would vary the benefit that is received.

This is really a welfare program that would be financed by consumers of electricity, and it seems to me this is not the kind of way of financing such a program.

I would also point out that, I believe it is on page 3 of the Senator's amendment, section 16(a) says:

> No electric utility may sell electric energy except in accordance with a rate schedule which has been fixed, approved or allowed to go into effect by a regulatory authority.

Now, in some States some large municipals are not controlled or governed by a regulatory authority. In that particular case the way I read that language that utility would not be permitted to sell electric energy. I am simply drawing attention to a place where I think there needs to be a change in the language.

Mr. HART. Mr. President, I yield to the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Stuart Brahs of my staff and Robert Faust of Senator PELL's staff be granted privileges of the floor during debate and all votes on the Public Utilities Regulatory Policy Act.

Mr. PERCY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HART. Yes.

Mr. PERCY. Mr. President, I ask unanimous consent for floor privileges during debate and vote on the pending measure for Chris Palmer and Ron Lanque.

Mr. MATSUNAGA. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. President, I ask unanimous consent that a member of my staff, Dr. Tak Yoshihara, may be permitted privileges of the floor during the consideration of the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, let me respond as briefly as possible to the Senator from Oklahoma's comments.

He said this is a welfare measure. I do not know why, if we are going to offer favorable rates to bulk consumers, that is not considered a welfare measure, and when we offer it to senior citizens it is welfare. All this amendment asks is that senior citizens be treated the same way as bulk consumers.

Second, he says this will lock us into a specific rate structure. The amendment clearly says it is to last for a maximum of 3 years while Congress is considering a comprehensive utility rate reform policy. It will insure that we do not penalize the elderly people in our society during that period.

On the other hand, he says there are going to be varying rates, and elderly people in one State may end up paying more for their energy than elderly people in other States. Obviously. The managers of the bill have been urging us not to intervene in State utility rate structures, and what I am trying to do is accomplish a specific purpose here without doing that.

The whole purpose here is to let the States set up the system and operate it in the context of their ongoing rate regulations.

The Senator from Oklahoma says this is subsidization. If I said that it was going to cost the utilities money I did not mean to say that. Obviously, it is going to cost the consumers money.

The total economic and financial impact of this proposal is going to be a reduction of about 2 percent of the total revenues of the utilities in this country. Obviously, that is going to be spread among those who pay the other 98 percent. But that is a judgment, I think, that the U.S. Senate can make.

Finally, the Senator from Oklahoma talks about people in trailers as opposed to people in houses, and they use disproportionately large amounts of electricity. The amendment requires the State utility commissions to establish what constitutes a subsistence amount of electricity for all senior citizens, and every senior citizen, whether living in a castle or a trailer, would get the same subsistence amount of energy in that jurisdiction at the lowest amount. So I think that may help solve some of the problems raised by the Senator from Oklahoma.

Mr. BARTLETT addressed the Chair.

The PRESIDING OFFICER (Mr. SARBANES). The Senator from Oklahoma.

Mr. BARTLETT. In the interest of time I am not going to cover every point. I would just like to cover really only one, and that is a point made about the large consumers of energy. In general, the larger companies and those engaged in some program that uses a lot of energy pay rates that are cost-related. It is not a welfare for the large companies. It is based on cost. This is how the rates have been established and maintained over the years.

I am prepared to yield back the remainder of my time.

Mr. JOHNSTON. Mr. President, is the Senator from Colorado ready to vote?

Mr. BAYH. Mr. President, will the Senator yield to the Senator from Indiana?

Mr. HART. Yes.

Mr. BAYH. Having been in the Presiding Officer's chair I listened with a great deal of interest to the dialog here. I do not want to prolong it. However, I must say that I think the Senator from Colorado is opening a door that portends a great deal of equity for a lot of citizens who are otherwise passed by.

My comment here is relative to what might happen if his effort does not succeed. I would hope that the whole issue of lifeline of a unit rate structure would be studied carefully for all households. I want to help the elderly. But I hate to see poor people and middle-income people have to pay a much higher rate than industrial users. So I see the Senator from Colorado approaching this as a positive first step. But I would hope that in the relatively short period of time in the future we could have an assessment of how we say to the middle-income American or the poor-income American who is out there trying to pay rent or pay mortgage payments, "We are going to get you a rate that is more commensurate with equity rather than have you pay a significantly higher fee than industrial users."

Mr. HART. I would like to respond briefly to the Senator from Indiana. The amendment does exactly what he is proposing. It requires the Secretary to submit a report to Congress within 18 months after the enactment of this provision, studying the extent to which cost justified changes in electric rates will make possible the extension of a subsistence quantity of electricity to all residences at reduced rate. So although this amendment will not require the implementation of a program to solve that problem, it takes the first step in identifying options and obtaining information

upon which this Congress can legislate in the future.

Mr. BAYH. If the Senator will yield, and I am happy to hear this from the vantage point of the Presiding Officer's chair, the only thing I heard was assistance to older people over age 62 which I think we can say amen to, but when we talk about equity in the rate structure I think we all have to recognize there is a good deal of equity existing up and down the chronology of the life span and going to the burdens borne by homeowners and nonhomeowners of all age groups. I am glad that is in the amendment.

Mr. HART. The Senator is absolutely correct and, because the committee did not want to venture too far into that field, we merely put this reporting requirement in there to lay the groundwork for that kind of legislation in the future.

Mr. President, I am prepared to yield back the remainder of my time.

I emphasize that I do not think it would be fair to reach the conclusion that the committee, by opposing this amendment, is turning its back on the senior citizens. I understand the floor manager's problems. I understand the committee's problems. But I do believe, and I believe very strongly, that this is a step that can be taken without breaching the conditions which the committee laid down for itself. It addresses an immediate problem for a class of citizens in our society who are in tremendous difficulty. I think it can be adopted, and I hope it can be supported by the committee even in the context of its strong desire not to go too far in instituting utility rate reforms.

Mr. JOHNSTON. Mr. President, I appreciate the distinguished Senator from Colorado putting the opopsition of the committee in proper context, not overstating the basis of our opposition but stating it very accurately, that we are not insensitive to the old folks. We would like to do something in this field. We have serious doubts that this is the right approach but in any event, it should be studied after hearings.

For that reason, Mr. President, I am ready to move to table and yield back the remainder of my time.

Mr. MATSUNAGA. Mr. President, will the Senator from Louisiana yield?

Mr. JOHNSTON. How much time does the Senator desire?

Mr. MATSUNAGA. Two minutes.

Mr. JOHNSTON. I yield the Senator 2 minutes.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. As the Senator from Colorado knows, while a Member of the House of Representatives, I was a member of the Committee on Aging and, as a member of that committee, I championed many a cause for the elderly citizen.

As a matter of fact, when I first came here the Stevenson amendment was about ready to dispose of the Committee on Aging here, and I joined with Senator CHURCH and was in the forefront to save that committee because I thought that committee would look after the affairs of the elderly.

As a member of the Energy Committee, however, I am troubled that this amendment is being offered to the pending measure. I was one of those in the committee who insisted that this bill, the utility rate bill, be limited to making the Federal Government an adviser, educator, and a promoter of good rate structure among the State utility and local utility companies.

While I fully appreciate what the Senator from Colorado is trying to do and I am in full sympathy with the plight of the elderly with reference to their energy needs, I am constrained to vote against the amendment because it would impose and it would require by Federal mandate the setting of rates for a special class of citizens, and I regret that this amendment is being offered to this bill. I will join with the Senator from Louisiana in saying, if the Senator would withdraw this amendment, we will immediately get into a hearing and establish the facts in the matter and perhaps bring out a bill which would take care of the problem which the Senator from Colorado so ably pointed out.

Mr. HART. Mr. President, the record of the Senator from Hawaii in this field is well known and his concern, I think, is documented throughout his distinguished career in Congress. I think all of the senior citizens in the country owe him a great debt in this regard.

I am hopeful that he will not oppose this measure. I think there are some things that transcend the simplicity of committee operations and the attempt to make our legislative lives clean and orderly. These are immediate and strongly felt human needs. I do not mean to imply that by voting against this amendment Senators are insensitive to those needs. I just want to emphasize that the senior citizens who are going to be cold this winter are not going to take much consolation in the fact that the committee tried to limit its jurisdiction on this bill. Whenever hearings are held, the problem is still going to be there and the idea of the Federal Government requiring States to adopt a simple and straightforward reform of this sort is still going to be before us. One more winter will have gone into the record books and into the lives of the people who are most hurt by our failure to act.

Mr. MATSUNAGA. If the Senator will yield, that is the exact point I am trying to make, that this is properly a State matter. The State of Hawaii has entered the field by payment of half of all the utility bills of those on welfare rolls. I am inclined to feel that that is where it belongs.

Since your State and my State have taken care of those who are really in need of this type of special treatment, then perhaps we can encourage the other States to do it without imposing a mandate, as we are inclined to do now; and, being an advisory agency, as the Office of the Secretary of Energy will be as provided in the bill, I would think that we should try this system first in an advisory capacity, in this bill, at least. Throughout the hearings and throughout the markup sessions, this was the thing that dominated the philosophy of the entire bill: That the Federal Government will serve in an advisory, educatory, and promotional capacity, not one of imposing mandates and absolute requirements upon the State facilities.

Mr. HART. Mr. President, today the Senate will have an opportunity to cast a vote for legislation which will greatly ease the economic hardship faced by many of our Nation's elderly in dealing with the spiraling cost of home energy.

America's elderly now number over 28 million—about 13 percent of the total population. Most of these individuals live on fixed incomes. But social security and other retirement income sources have not kept pace with increasing home energy costs. Between 1973 and 1976, social security payments increased by 30 percent. At the same time, energy costs for seniors increased by as much as 44.8 percent in the West, and 61.4 percent in the north-central region of the country.

Recent forecasts by the U.S. Weather Service predict another cold winter for 1977–78. We cannot in good conscience permit the elderly to endure another winter of cold and economic hardship.

Mr. President, a number of organizations have endorsed this lifeline proposal, including the National Council on Senior Citizens, the Urban Elderly League, the National Association of Retired Federal Employees, the National Indian Council on Aging, Environmental Action, the Sierra Club, Seattle Department of Human Resources, and the National Association of Counties. In addition, the Colorado Congress of Senior Organizations, the city and county of Denver, and the Boulder County Lifeline are also supporters of the lifeline concept.

Mr. HART. Mr. President, I would only say in conclusion that the system of various States adopting their own proposals threatens to place them at a competitive disadvantage. To the degree that utility rates are raised for nonelderly consumers to help make up the difference in the lower rates paid by seniors, industries, and large commercial users may decide, because of that rate differential, to locate in States which do not have lifeline programs. This possibility is a strong disincentive for a State to enact this kind of law in isolation.

I yield back the remainder of my time.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time, and I move that the amendment be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table, on which the yeas and nays have been ordered.

Mr. HART. And also on the amendment itself.

The PRESIDING OFFICER. And also on the amendment itself. The pending question is on agreeing to the motion to lay on the table the amendment of the Senator from Colorado (Mr. HART). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Wyoming (Mr. HANSEN) is necessarily absent.

The result was announced—yeas 35, nays 61, as follows:

[Rollcall Vote No. 527 Leg.]

YEAS—35

Allen	Garn	McClure
Bartlett	Glenn	Morgan
Bellmon	Goldwater	Moynihan
Bentsen	Griffin	Nunn
Bumpers	Hayakawa	Proxmire
Burdick	Hollings	Scott
Byrd, Harry F., Jr.	Huddleston	Sparkman
Chafee	Jackson	Stennis
Curtis	Johnston	Stevenson
Eastland	Laxalt	Talmadge
Ford	Long	Wallop
	Matsunaga	Young

NAYS—61

Abourezk	Hart	Pearson
Anderson	Haskell	Pell
Baker	Hatch	Percy
Bayh	Hatfield	Randolph
Biden	Hathaway	Ribicoff
Brooke	Heinz	Riegle
Byrd, Robert C.	Helms	Roth
Cannon	Inouye	Sarbanes
Case	Javits	Sasser
Chiles	Kennedy	Schmitt
Church	Leahy	Schweiker
Clark	Lugar	Stafford
Cranston	Magnuson	Stevens
Culver	Mathias	Stone
Danforth	McGovern	Thurmond
DeConcini	McIntyre	Tower
Dole	Melcher	Weicker
Domenici	Metzenbaum	Williams
Durkin	Muskie	Zorinsky
Eagleton	Nelson	
Gravel	Packwood	

NOT VOTING—4

Hansen	McClellan	Metcalf
Humphrey		

So the motion to lay on the table was rejected.

Mr HART. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I ask unanimous consent that the order for the yeas and nays on the amendment be withdrawn and I move the adoption of the amendment.

Mr. BELLMON. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. JOHNSTON. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Louisiana will state the point of order.

Mr. JOHNSTON. I am advised that this amendment pertains in part to financial assistance, that there is no financial assistance provision in the bill, and it therefore is not germane.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Mr. President, this amendment does not relate to financial assistance, it relates to utility rates. It does not include any financial assistance whatsoever.

Further, it is the understanding of the Senator from Colorado that the unanimous-consent agreement which included this amendment was, in itself, an agreement that amendments under that unanimous-consent order were germane.

The PRESIDING OFFICER. Will the Senator forbear for a moment while the Chair consults as to the germaneness?

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Colorado will state the parliamentary inquiry.

Mr. HART. Will the Chair inquire of the Senator from Louisiana, or would the Senator from Louisiana advise the Senate, as to what part of this amendment is financial assistance?

Mr. JOHNSTON. Mr. President, the whole thrust of this amendment is for financial assistance to the elderly and it does not pertain to conservation. The whole thrust is inconsistent with that of this bill, which is a conservation bill.

Mr. HART. Mr. President, on its face, this amendment does not involve financial assistance and, therefore, is not out of order.

The PRESIDING OFFICER. It is the view of the Chair that the thrust of the amendment offered by the Senator from Colorado deals with the subject of ratemaking, which is the subject matter dealt with by the bill, and that the amendment is, therefore, germane. The point of order is not sustained.

Mr. JOHNSTON. Mr. President, in view of the fact that the Senator from Colorado won on the motion to table by an overwhelming margin, in view of the fact of the lateness of the hour and that we are trying to get out of here, I hope that we can suspend the rollcall vote. I, therefore, ask unanimous consent that this matter be allowed to go on a voice vote and that the order for the rollcall be vitiated.

The PRESIDING OFFICER. Is there objection to the request that the order for the yeas and nays be vitiated?

Mr. BELLMON. Mr. President, I renew my objection.

The PRESIDING OFFICER. Objection is heard.

Mr. BUMPERS. Mr. President, is it in order for me to ask the Senator from Colorado a question at this point?

The PRESIDING OFFICER. If time is yielded to the Senator from Arkansas, which would have to be off the bill for that purpose.

Mr. BUMPERS. Does the Senator from Colorado yield to me?

Mr. HART. I have yielded back all my time on this.

The PRESIDING OFFICER. The time on the bill is under the control of the managers.

Mr. JOHNSTON. I yield such time to the Senator from Arkansas as he needs.

Mr. BUMPERS. Mr. President, I have some difficulty with this amendment and I voted to table it. It is the sort of amendment that any Member of this body would have a very difficult time voting against.

I was troubled about it for one reason: I could not see that there were any income limitations. For example, it provides that if you are over 62 and on social security, you are qualified for the best rate available.

Is that correct?

Mr. HART. The Senator is correct.

Mr. BUMPERS. Would that mean, for example, if a person were over 62, he would have to be on social security to be eligible?

Mr. HART. No, that is not correct.

Mr. BUMPERS. If he is over 62, he is eligible?

Mr. HART. That is correct.

Mr. BUMPERS. If he happens to be president of General Motors, he is still entitled to the rate?

Mr. HART. The Senator is correct. The debate on this issue went into rather elaborate detail. The reasons for that were for purposes of simplicity.

It was the view of many Members of the Senate that they do not want the Federal Government imposing conditions on the States in their rate structures. The managers of the bill and the Senator from Colorado debated that at some length. The statistics offered by the Senator from Colorado in support of the fact that the number of elderly who are not only not the president of General Motors but below the poverty line, are significant enough that, at least in the view of, apparently, close to two-thirds of the Senate, it is enough to justify encouraging a mandate on the existing State commission to adopt a rate structure which addresses that fact.

Mr. BUMPERS. Does the Senator have any figures on what it means to the utility companies in rates? Utility companies all have a lot of bonded indebtedness, and have a set rate of return. I assume this provision, which provides lower rates for everybody over 62, would mean that, in order for a utility company to maintain its present rate of return and also amortize its indebtedness, it would have to shift the burden of whatever benefits are granted to those people over 62 to all the others under 62?

Mr. HART. The Senator is correct and the Library of Congress study, which is in the record in the debate, was a study of some length, but to the Senator from Colorado, it was to the effect that if every citizen of this country over 62 enrolled for these benefits, the maximum impact on the revenues of utilities across this country would be no more than 2 percent and probably less. The burden would be paid by the 98 percent of those not covered.

Mr. BUMPERS. Is anybody covered except those persons over 62?

Mr. HART. No.

Mr. CHAFEE. Mr. President.

Mr. JOHNSTON. Mr. President.

The PRESIDING OFFICER. Who yields time? The time is under the control of the manager of the bill.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. All time on the amendment was yielded back. The time must now be yielded from the bill.

The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I yield myself 2 minutes on the bill.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the Senator from Arkansas has pointed out a very good point.

The PRESIDING OFFICER. Will the Senator suspend for a moment until we obtain a little better order in the Senate? Would Senators please take their seats and clear the aisles?

Mr. JOHNSTON. Mr. President, I will be very brief. Let me just say that for those Senators who think that by voting for this amendment we can do something very politically popular and help the old folks, therefore, it will be very much appreciated, let me say that this is but the first step into Federal regulation of State regulatory processes.

If we do this, the next step, next week, next month, or next year, the poor folks will be in, and then after that I guess the young folks, then after that the whole panoply of Federal standards for State regulation.

Many people think we ought to have Federal standards for State regulation, but for those who do, let me say that they ought to proceed only after hearings. We have not had hearings on lifeline rates. There are many lifeline rates instituted by States already in operation.

This is going to throw those lifeline rates out and substitute a Federal rule that says that 62 years of age is all we have to have and we qualify for a lifeline rate. We get subsidized at 62 by a poor person who is under 62.

If that is the kind of Federal rule we want to declare, then I say that we ought to proceed only after hearings.

That is the only basis for objecting to this. Let us at least have a modicum of hearings before we impress Federal regulations on State regulatory proceedings.

Let me say just one more thing and I will sit down.

The most salient point that was made against Federal control of State regulatory proceedings is what it will do to the rate base in the State and, in turn, the ability of States to procure money on the bond markets.

Every one of the Wall Street people we had testify before our committee stated that to put this wild card in, Federal regulation with Federal delays and Federal uncertainty, in a field we know nothing about, is going to deprive utilities of the ability to go into the bond market and finance their—

The PRESIDING OFFICER. The 2 minutes have expired.

Mr. JOHNSTON. Mr. President, I will yield 2 minutes to the Senator from Colorado, and we want to bring this to a conclusion.

Mr. HART. I was prepared several minutes ago.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado was recognized for 2 minutes by the Senator.

Mr. JOHNSTON. Mr. President, if I may first yield to the distinguished Senator from Rhode Island 2 minutes because he had asked before, then I will yield 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 2 minutes.

Mr. CHAFEE. Mr. President, just a couple of quick questions to the Senator from Colorado.

As I understand it, this bill, as it says, mandates that the States do this, is that correct, they have to do this?

Mr. HART. Yes, the Senator is correct.

Mr. CHAFEE. The second point, no matter how wealthy a person is at 62, he can get this?

Mr. HART. The Senator is correct.

Mr. CHAFEE. And under the Senator's statistics, that will increase the rates of everybody else, to some degree. How much is debatable, but to some degree.

Mr. HART. To a very slight degree.

Mr. CHAFEE. Well, 2 percent, or whatever it is.

And, therefore, am I further correct that this could well work out that an impoverished person who is less than 62 has his electric rates go up to pay for the president of General Motors who is over 62 who gets this benefit, is that correct?

Mr. HART. The Senator is correct.

But as I observed on the same question from the Senator from Arkansas, every senior citizen in our society is not the retiring president of General Motors.

Mr. CHAFEE. That is absolutely so.

Mr. HART. And 7 million senior citizens in this country, which is about 20 percent of the elderly population, live below the poverty level. The median income of elderly households was $7,300 in 1975. One-fourth of the elderly families in America received incomes below $5,000.

Now, if we want a simple proposal to take care of a serious problem in this country, then this is the way to do it.

If we do not want to hedge about it, and conform to the limited Federal regulation the Senator from Louisiana claims he wants, this is the way to do it.

Mr. STEVENS. Will the Senator yield?

Mr. CHAFEE. Of my 2 minutes, if I may ask, how much time have I got?

The PRESIDING OFFICER. One minute remains.

Mr. CHAFEE. Let me just say, this is a case in which the Federal Government is mandating that every State do something. He talks about the older people. While we are dealing with people over 62, we are imposing a higher rate on those who are younger and in many cases cannot afford this additional rate. It seems to me it is the ultimate in big brother, and the Federal Government telling States what they should do.

I thank the Chair.

Mr. STEVENS. Will the manager of the bill allow me to have 2 minutes on the bill?

Mr. BARTLETT. Yes.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 2 minutes.

Mr. STEVENS. May I say to the Senator from Colorado, I voted not to table the amendment because I heard part of the discussion in which the manager of the bill urged that some sort of study be made concerning this proposition.

I say to the Senator from Colorado, I will vote against the amendment if I have to do so. I do think he has a very good idea, one we ought to pursue, but one we ought to know a little more about before it becomes law. I would hope that he would accept the suggestion of the Senator from Louisiana to have some sort of provision in the bill to start the process that will achieve the objective that I believe we mutually seek.

But I do not think that now is the time, or that I know enough about it, to impose it in this bill and make it mandatory to the States at this time.

I came back to this discussion to urge the Senator to accept the offer of the Senator from Louisiana. We did not want to see it tabled, nor the idea destroyed. but we want to see—for myself I would like to see—a greater amount of knowledge and more specific information concerning how it could be achieved.

For instance, I am not so far from the age of 62. My kids live in my house up in Alaska. But our utility bill is paid by me.

Now, they are working. Are they going to get a preferential rate on my place in Alaska when I am 62?

Mr. HART. That would depend on the Alaska Public Utilities Commission.

Mr. STEVENS. I think a lot more knowledge should be gathered on this, particularly in terms of its impact as to where this total rate readjustment is going to come.

Again, I think the Senator is right, that the older people in this country are facing higher and higher real property taxes, higher and higher taxes for energy, they are facing the problems of inflation on fixed incomes, and we need to do something to help them.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. BARTLETT. Mr. President, I yield myself 2 minutes on the bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I would like to point out to my colleagues that the bill for this welfare program is going to be paid by the consumers of electricity, not the utilities. The utilities, of course, in their rate-making appeals and applications through the various agencies of the State government that regulate them, will be granted this amount of money.

I also point out that there was a TVA study made, and in this sample, the lifeline rate, on the average, produced higher electric bills for 26 percent of the low-income families, those already facing the highest bills under conventional rates, and at the same time meant reduced electric bills for 49 percent of high-income families. In other words, this lifeline rate would have resulted in 26 percent of low-income families subsidizing 49 percent of the high-income families, clearly a self-defeating result.

I also point out that the poor who pay rent will have this in their rent, and they are going to be subsidizing—if their energy costs are in the rent—this along with all the other consumers.

So I think it gives very little leeway to the States. The State regulatory agencies, as I understand it, can only set the

amount of energy involved as a minimum subsidy for the elderly. I feel very strongly that this needs a lot of work before the Senate should pass on it.

PRIVILEGE OF THE FLOOR

The privilege of the floor was requested by the following Senators for various staff personnel, for which unanimous consent was obtained: Senator HARRY F. BYRD, JR., Senator GLENN, Senator GRAVEL, Senator LEAHY, Senator JAVITS, Senator ZORINSKY, Senator BARTLETT, Senator HATCH, Senator HEINZ, Senator WALLOP, and Senator DANFORTH.

Mr. JOHNSTON. Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. There is time on the bill to be yielded by the managers, if they choose to do so.

Mr. ALLEN. Mr. President, will the Senator yield about 2 minutes, so that I can ask the sponsor of the amendment a question?

Mr. JOHNSTON. Yes, I yield 2 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 2 minutes.

Mr. ALLEN. I ask the distinguished author of the amendment what the meaning is of section 19, on page 7, which says that there is authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 15, 16, 17, and 18 of the act. Section 15, of course, is the one that mandates that this low rate shall be put into effect.

The question I ask is this: Does that mean the Government would provide a subsidy for the putting in of that rate?

Mr. HART. Mr. President, will the Senator yield me time to answer the question? I do not have any time.

Mr. JOHNSTON. The Senator has 2 minutes.

Mr. ALLEN. I have 2 minutes.

Mr. HART. Mr. President, the purpose of this amendment is not for the Federal Government to finance the rate changes, first, since they will be modest in any case and merely need to be changes made by respective State utility commissions.

Section 19 could be clarified, and I will be more than happy to clarify it, that its intent and purpose is to provide the necessary funding for carrying out the study provisions of this amendment, which are to look into the necessity of overall incremental pricing rate reforms.

Mr. ALLEN. Does not the Senator agree that the wording would indicate that the Government was going to provide a subsidy to provide for this low rate?

Mr. HART. No, that is not the intent, nor do I think it says that—necessary to carry out the provisions of the section. That should be altered only to reflect the study provisions of the amendment.

Mr. ALLEN. Will the Senator ask for permission to have a modification of that portion of the amendment?

Mr. HART. Yes.

Mr. President, I ask unanimous consent that it be in order to modify the amendment to delete, in section 19, sections 15, 16, and 17.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. I thank the Senator from Alabama.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. HART. I do not have the floor.

The PRESIDING OFFICER. The 2 minutes yielded to the Senator from Alabama have expired.

Will the Senator send the modification to the desk?

The modified amendment is as follows:

"LIMITED AUTHORIZATION OF APPROPRIATIONS

"SEC. 19. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 18 of this Act.

"EFFECTIVE DATE

"SEC. 20. The provisions of sections 15, 16, 17, and 18 of this Act shall take effect ninety days after the date of enactment and shall remain in force for a period not to exceed three years thereafter.".

On page 16, line 19, strike out "SEC. 15." and insert in lieu thereof "SEC. 21.".

On page 16, line 20, immediately after "out" insert the following: "sections 1 through 14 of".

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to amendment No. 1399, as modified. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

(Mr. CANNON assumed the chair.)

Mr. GOLDWATER (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Illinois (Mr. STEVENSON). If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Illinois would vote "nay."

Mr. STEVENS. I announce that the Senator from Wyoming (Mr. HANSEN) and the Senator from Virginia (Mr. SCOTT) are necessarily absent.

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 528 Leg.]

YEAS—57

Abourezk	Gravel	Nelson
Anderson	Hart	Packwood
Baker	Haskell	Pearson
Bayh	Hatfield	Pell
Biden	Hathaway	Percy
Brooke	Heinz	Randolph
Byrd, Robert C.	Inouye	Ribicoff
Cannon	Jackson	Riegle
Case	Javits	Roth
Chiles	Kennedy	Sarbanes
Church	Lugar	Sasser
Clark	Magnuson	Schmitt
Cranston	Mathias	Schweiker
Danforth	McGovern	Sparkman
DeConcini	McIntyre	Stone
Domenici	Melcher	Thurmond
Durkin	Metzenbaum	Tower
Eagleton	Moynihan	Weicker
Ford	Muskie	Williams

NAYS—36

Allen	Garn	McClure
Bartlett	Glenn	Morgan
Bellmon	Griffin	Nunn
Bentsen	Hatch	Proxmire
Bumpers	Hayakawa	Stafford
Burdick	Helms	Stennis
Byrd, Harry F., Jr.	Hollings	Stevens
	Huddleston	Talmadge
Chafee	Johnston	Wallop
Culver	Laxalt	Young
Curtis	Leahy	Zorinsky
Dole	Long	
Eastland	Matsunaga	

ANSWERED "PRESENT"—1

Goldwater

NOT VOTING—6

Hansen	McClellan	Scott
Humphrey	Metcalf	Stevenson

So amendment 1399 was agreed to.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. BROOKE. I yield.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with Mr. BROOKE, the author of the amendment, and with Mr. NELSON, the manager of the bill.

I ask unanimous consent that each of the amendments by Mr. BROOKE be reduced in half as to time with the exception of the first one.

Mr. DURKIN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Without objection——

Mr. DURKIN. No.

Mr. BUMPERS. Reserving the right to object.

Mr. DURKIN. Mr. President, there is a strong possibility that the Senator's amendment numbered 1404 is subject to a point of order in that it deals primarily with financial assistance and there is no financial assistance in the bill before us. As long as this unanimous-consent request will in no way impede anyone's ability to raise that point of order and to have that point of order sustained, if this unanimous-consent request in no way impacts on that, then I do not think I would have an objection.

Mr. ROBERT C. BYRD. Mr. President, could we except amendment numbered 1404 so that there will be no problem involved in my time request?

Mr. DURKIN. Mr. President, I have not had a chance to look at the other amendments. They might be equally deficient.

Mr. ROBERT C. BYRD. All right. I withdraw my request.

Mr. JOHNSTON. Mr. President, I wonder if the Senator will bring up that amendment at this time and have that ruled on before we have debate on it?

Mr. BROOKE. Mr. President, I shall call up my amendment and I wish that we proceed in the usual order. I think at

the appropriate time if the Senator wishes to raise the point of order he can raise the point of order. But I wish to proceed with my amendment.

Mr. HASKELL. Mr. President, will the Senator yield?

Mr. BROOKE. I yield to the Senator from Colorado.

Mr. HASKELL. Mr. President, I thank the Senator from Massachusetts for yielding to me.

The PRESIDING OFFICER. The Senator from Colorado.

UP AMENDMENT NO. 875

(Purpose: To prevent discrimination by utilities against certain energy consumers utilizing alternative energy sources)

Mr. HASKELL. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes an unprinted amendment numbered 875.

Mr. HASKELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 8, after "COGENERATION" insert a comma and "BACK-UP POWER,".

On page 13, between lines 16 and 17, insert the following new paragraph:

"(c) Not later than one year after the date of enactment of this Act, the Secretary of Energy shall, after consultation with representatives of State regulatory authorities, electric utilities, and alternative energy industries and consumers, recommend to State regulatory authorities guidelines for the purpose of preventing utilities from engaging in any conduct which results in unreasonable or discriminatory rate or pricing structures or practices against consumers that utilize power facilities other than those provided or otherwise supplied by any such utility including, but not limited to solar, geothermal, photovoltaic, wind, and other power sources as the Secretary may decide.".

Mr. HASKELL. Mr. President, a problem which is not addressed in the pending Public Utilities Regulatory Policy Act, S. 2114, is the matter of discrimination by utilities against certain energy consumers who utilize alternative energy systems. Although section 12 requires guidelines for prohibiting discrimination against cogenerators and small power producers, this section does not address the problem of discrimination against other alternative energy systems which require backup power for varying periods of time, such as solar hot water and space heating systems. Unless backup power is available for these systems at reasonable rates and under equitable conditions, the economic feasibility and marketability of many alternative energy systems will be inhibited. As a result, the widespread use of these alternative energy systems which have the potential to conserve large quantities of nonrenewable fuels will not be realized.

Although reports of discrimination are not widespread yet, they are numerous enough to cause concern, especially if we are serious about expanding the utilization of alternative energy systems in the near future. The most recent example of discrimination was reported in the September 30 issue of New Times in an article entitled "Sun Wars." In this instance a builder had installed solar units in a large residential complex and the local gas utility arbitrarily changed the development's classification to "nonresidential." In essence, this means that unlike other housing developments, this one would be subject to having its fuel supply interrupted or curtailed in times of shortages.

In addition to this instance, we have received information from a number of State energy offices recounting cases of alleged discrimination. While alternative energy systems which require backup power should pay their fair share, they should not be discriminated against. This amendment will require that the Secretary of DOE recommend guidelines for utilities which are designed to insure that practices and rate structures do not arbitrarily discriminate against these promising new technologies. The Secretary would develop guidelines for utilities, not rules, which would thus insure responsiveness to regional differences and be consistent with the position adopted by the committee in reporting S. 2114. Moreover, a provision similar to this one passed in the House.

Mr. President, it is my understanding that this amendment has been cleared with both sides of the aisle.

Basically what it does is say that the Secretary of DOE is required to recommend guidelines to State public utility commissions so that there will not be any discrimination in their ratemaking or other practices which has an adverse effect on alternate energy systems, such as solar hot water and space heating systems There have been examples of discrimination reported in California and Massachusetts and one close call in Colorado where the utility eventually rescinded its order.

I think we all agree that this goes directly against the national energy policy goals.

Mr. President, I, therefore, ask that my amendment be adopted.

Mr. JOHNSTON. Mr. President, this amendment is consistent with the general thrust of the committee's consideration of this bill. It provides for guidelines relating to nondiscriminatory practices. It does not put a Federal mandate on the State, but rather requires them to come up with their own guidelines.

Mr. HASKELL. That is correct.

Mr. JOHNSTON. We think it is an excellent amendment and we support it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. BARTLETT. Mr. President, I shall make a very short statement.

I concur with my colleague who is managing the bill. This permits the Federal Government to make recommendations, but those recommendations are not binding on the agencies which regulate the utilities.

I think this is the understanding, and I support this amendment and accept it.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

Mr. BARTLETT. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

Mr. HASKELL. Mr. President, I thank my friend from Massachusetts very much.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROOKE. Mr. President, I ask unanimous consent that Meg Powers, of my staff, be accorded the privilege of the floor during the consideration of the bill presently before the Senate and any and all votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROOKE. Mr. President, there is no longer any question that the availability and management of electric utilities——

The PRESIDING OFFICER. Who yields time to the Senator from Massachusetts?

Mr. DURKIN. Mr. President, how much time does the Senator need on the bill?

Mr. BROOKE. I need 30 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. DURKIN. How much time remains on the bill?

The PRESIDING OFFICER. The Senator from Louisiana has 36 minutes, and the Senator from New Mexico has 57 minutes.

Mr. BROOKE. Mr. President, under those circumstances——

Mr. DURKIN. How about 5 minutes?

Mr. President, I reserve my right to object to any Senator's request.

The PRESIDING OFFICER. The Senator always has a right to object. No unanimous-consent request is pending.

Mr. BARTLETT. Mr. President, will the Senator yield?

Mr. BROOKE. I am very pleased to yield.

Mr. BARTLETT. Is the Senator handling the time or if he is not handling the time, I shall yield? I wish to make sure the Senator has time.

Mr. BROOKE. I was asking for 30 minutes.

The PRESIDING OFFICER. The Chair is inquiring who yields time to the Senator from Massachusetts.

Mr. BARTLETT. I yield 30 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. Thirty minutes is yielded to the Senator from Massachusetts.

Mr. BROOKE. Mr. President, there is no longer any question that the availability and management of electric utility energy is a matter of national concern. Energy resources in general did not become a matter of public policy with the introduction of the President's energy program. For over 2 years, the Nation has been implementing laws whose sole

public purpose is the conservation and production of our domestic energy resources.

And electric energy in particular dominates a large part of the energy sector. Twenty-nine percent of our primary fuel resources are consumed by the electric utilities which produce therefrom 12 percent of the end-use energy consumed. Furthermore, electricity's share of our consumption is increasing and may well double before the end of the century.

And no one seriously questions that utilities have general problems whose impact falls on consumers across the Nation. Every Senator is aware that customers are begging for relief from escalating utility bills. Some of the price increases that horrified us so much in the last 3 years are now leveling off to a steady rate of increase rather than to the sudden upward swings to which we became so unhappily accustomed. But, in the past year, electric bills nationally rose more than 9 percent, almost 3 percent higher than the general cost of living. Indeed, since the Arab oil embargo, the average utility bill in the United States has increased over 70 percent. And in areas like my own where we depend on imported fuel for peak load power in our utilities we have seen those costs escalate even more. The northeast pays the highest electricity bills in the Nation, with Massachusetts being the highest cost State, second only to New York City, in its rates. This is in spite of the fact that we have taken the risks of relying more heavily on nuclear powered generation than has any other part of the country. In fact, we have three times the national average of nuclear baseload generating capacity. But there is virtually no region of the country, and there is surely no U.S. Senator, that has not identified utility prices as a major problem and a continuing dilemma.

Not only is it perfectly evident that managing electric power is of national interest. It is also clear that there are management strategies, particularly restructuring of rates, which can increase the efficiency of precious basic energy resources, save power, reduce the growth of energy demand, reduce the need for energy capital, and maximize economic and procedural justice to end-users of electricity.

Mr. President, I suggest, therefore, that the overall definition of the policy problem and even the nature of the most effective solutions to that problem are fairly obvious. The only thing that is not yet obvious is what the Congress of the United States is going to do about it. And those of us who have worked on these issues for some years are deeply disappointed. The apparent response of the Senate Energy Committee is to do simply nothing.

There is really no other way to interpret this legislation before us. The accompanying report characterizes development of standards as "an unnecessary intrusion" without any adequate explanation. Instead, we are presented with a bill which provides that the Secretary may collect information and make suggestions about rates to commissions, or to nonregulated utilities, which happen to be holding hearings. These suggestions are to be essentially ad hoc, based on no formalized body of Federal policy. And the Department's ability to be a presence at all depends on future appropriations for staff. Also, the Secretary's rights as a party in any proceeding are so limited by this measure that they are less than those of any other party to the case. The Secretary may not appeal even an arbitrary and capricious rate decision. Thus, nothing requires consideration of her or his recommendation. Indeed, there may be a bias against such consideration since regulators usually feel a need to protect their decisions against possible appeal. Finally, we are asked to enact a great many studies, including a continuation of the kind of research efforts we authorized 2 years ago precisely so that by this time we could make some policy determinations about appropriate Federal strategies.

I think if we are frank about what has happened in the course of consideration of this measure, we will be forced to admit that the timidity of this approach is a direct result of the emotional symbolic appeals that have characterized discussions of this issue.

A massive and expensive campaign of letters to stockholders following a format suggested by utilities' national trade associations has caused unwarranted fears among those who depend on utility stocks for income. The kind of rhetoric that is typical in the letters from the utilities to their owners include such threats as "the very survival of the United States as a free nation is threatened," or "this is a doomsday plan" or "this is an attempted power grab by Washington federalists"—a phrase which many companies seemed to fancy, and finally, "the free enterprise system will be doomed." I have some examples of this widely disseminated nonsense and I ask unanimous consent that they be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BROOKE. Mr. President, no elected official wants to confront an electorate that has been frightened by such demagogic and simplistic appeals. But we in the Congress have a responsibility to provide leadership on these energy issues and if we had done so sooner it is very likely that this kind of reactionary and uninformed response would never have arisen at all. As things stand, I am sure we can establish a sound policy initiative and explain it to the American people who are entitled to all of the facts.

Of course, it is only natural that many elected officials see the problems of the utilities as so complex that they feel there will be no obvious political reward from the sophisticated, yet not highly visible, solutions that Federal action might advance. Indeed, most of us here realize that there is no magic answer to continuing increases in consumer electric bills. But that is no reason for the Congress of the United States to abandon the problem to the 50 States and to let State officials absorb the political reaction that utility regulation sometimes evokes. I appeal to all of my colleagues to realize that, if the utilities' problems of cost, inefficiency, growth rates, and dependence on fossil fuels are not resolved the Congress will eventually be required to find a solution anyhow. And we will be under far greater pressure than we now find ourselves. These issues will be coming right back here to us in the long run. We should not wait for a full blown crisis to take the responsibilities that are rightfully ours.

Mr. President, I submit that congressional passage of any half-way measure like the one before us today would send a clear and negative signal to regulators at the State level. It would say that the expectation of clear Federal policy guidance and direction under which State commissions have operated in the last 4 years, is not to be fulfilled. It will signal that there will be no minimal policy that could equalize ratemaking among jurisdictions. Thus, we would again be saying that progressive States which might act to establish policies which could further advance us toward our national energy goals will be penalized in competition for new industry. If the Federal Government's embryonic energy leadership is to be shackled by the Congress in the way this committee proposes, then the day when consumers can evaluate the true value of their energy demand and modify their behavior to reduce current wasteful practices has been indefinitely and unnecessarily delayed. The interjurisdictional competition to provide cheap electric power on convenient terms, regardless of the energy consequences, could well resume. And all this, Mr. President, at a time when we could instead be providing real guidance which would reduce future energy demands and save consumers money.

The committee's approach suggests that States can essentially do the job on their own. I think it is important to examine the record more realistically, as this is probably the fundamental dispute between the committee and the coalition backing my amendments.

To be sure, there is a new awareness on the part of State commissioners that there is a changing environment for utilities. There is a fair amount of studying underway. The National Association of Regulatory Utility Commissions is gathering data under the auspices of Electric Power Research Institute in the industry's first general attempt to analyze rate design improvements. DOE has funded various small demonstrations in 15 States. Overall, 25 States have studied or are studying rate redesign in serious evidentiary hearings.

On the surface, this seems to be progress. But the true test is whether a firm commitment is made to act. And 12 of those 25 States have already decided to take no action. It is essential to recognize that according to DOE in every case States have not made this decision, because they find rate reform inappropriate to the State's needs. Rather these commissions cite lack of data and inability to get it readily as their reason for not instituting change.

Only four States—New York, Cali-

fornia, Wisconsin, and Michigan—have ordered rate reforms into effect in selected service areas. Virginia will do so in PEPCO's service area in 1979. Pennsylvana and Vermont have optional time-of-day rates in effect in some areas. And only three more—Connecticut, Maryland, and North Carolina—have asked utilities to file time-of-day rates for certain industrial customers for specific commission consideration. This means 10 States have some rate reforms in effect in some areas. The rest are awaiting either further assistance and resources and/or further signals as to how other States are going to act.

There can be no question that commissions recognize they do not have the resources to proceed to reform their practices alone. One indication of their weakness is that on the average, expenditures by commissions for State utility regulation in the United States amount to less than one-tenth of 1 percent of the revenues of the regulated utilities. About half of all State commissions employ 20 or fewer staff, including part-time, clerical, and support personnel, for gas and electric utility regulation, and about half the larger commissions employ 50 or fewer. With such small staffs, commissions can do little more than react to the expensive and sophisticated presentations of utilities and their more active customers who are usually well represented by skilled counsel.

The fact that 23 commissions had to be turned away from funding they had applied for under ECPA title II on the first round of grants and that 27 were refused on the second round of grants shows the crying need at the State regulatory level. In the face of such demands for help, the committee cannot argue that all is well at the State regulatory bodies.

We are all familiar with the essentially conservative bias built into State regulatory processes. And that bias, explains the slow pace of change at that level.

First, the capital-intensiveness and traditional stability of utilities have created a very cautious, conservative industry, and regulatory system. Second, utility ratemaking has long been used to expand energy sales and to subsidize certain groups of customers, not always industrial customers, to be sure. Relatively little attention has been paid to overall "system optimization." Third, the recent public outcry over rate increases, nuclear plant siting, environmental protection, and other utility issues has made rational discussion of ratemaking almost impossible, especially in the absence of technical resources. And finally, most commissions are too cautious to act in such a manner as to harm major customers' competitive position when there is no guarantee other States will take any kind of similar action. Mr. President, this refusal by the committee to establish a Federal policy direction does not free the State commissions. It leaves them shackled to the status quo, without support or leadership.

This review of the continuing prospects for State inaction shows that a failure to establish a clear Federal policy on electric energy would plainly be irresponsible. On the other hand, I would agree with anyone who suggested that a Federal takeover of regulation would be equally, if not more, irresponsible. For it is perfectly true that no central authority today exists as is able to propose regulation for local situations. However, it is time to face honestly the fact that no bill considered by the Congress this session envisioned any such takeover as the rhetoric of the industry opponents tried to suggest. We may disagree among ourselves about the subjects and procedures concerning which there should be broad Federal standards. And we may reasonably argue what the legal force of those standards would be. But I feel strongly that we cannot question our responsibility at least to establish a general policy and to insure that it is taken seriously. And, although I have long personally favored a much tougher kind of Federal standard, my amendments are designed only to assure that a clear message about the importance of reform go forward from the Senate today.

In essence, the five amendments, which the bipartisan coalition supported by the administration is offering, taken together, would put the Senate on record as taking utility reform seriously. We propose to offer the States enough staff and financial support to do the difficult analysis required in any serious rate reform undertaking. We propose to make the Secretary's rights and thus the views of the United States equivalent to those of any other intervenor. Finally, we propose that the Secretary establish a written body of ratemaking policy guidelines for all States to draw on. And we will assure that every State gives those recommendations serious consideration as being the expression of a national policy of encouraging fair and efficient electric energy usage.

Mr. President, the Secretary of Energy has offered full support to our efforts to strengthen this measure. I ask unanimous consent that his letter to me be printed in full following my remarks. But I would like to quote the section in which Dr. Schlesinger writes:

> The amendments you and your cosponsors have proposed would aid the federal government and state utility commissions to ensure that regulatory policies promote conservation in accordance with unique needs and circumstances of each state.

I have previously inserted in the RECORD letters of support from the United Auto Workers, the Sierra Clubs, and Environmental Action. Today I ask unanimous consent that letters of support from the Public Citizen/Congress Watch, the American Public Power Association, and the National Association of Rural Electric Cooperatives be printed in the RECORD following my remarks, and also, editorials from the Washington Post and the Boston Globe supporting the position that the committee stand on this bill is as the Post said, "spurious."

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BROOKE. Mr. President, our amendments represent a very modest attempt to institutionalize a Federal policy on electric energy conservation. There has really been no serious opposition to this particular package, and a number of us wish it could be even stronger. Only those who wish to abdicate policy responsibility completely could oppose these improvements to the bill. I submit to my colleagues that the time to assume our rightful responsibilities is now.

EXHIBIT 1

ENERGY POLICY TASK FORCE,
Washington, D.C., October 5, 1977.

Re S. 2114 Public Utilities Regulatory Policy Act of 1977.

DEAR SENATOR: The Energy Policy Task Force of the Consumer Federation of America, the nation's largest consumer organization strongly urges you to support the proposed amendments to Senate Bill 2114, which address electric utility reform. These include amendments by Senators Sasser, Kennedy and Bayh to encourage utility reform for wholesale power suppliers and amendments cosponsored by Senators Brooke, Cranston, Percy, Hart, Riegle and Anderson on retail utility rate reform.

Specifically, we urge you to vote for the:

(1) Sasser Amendment to provide the Federal Energy Regulatory Commission with authority to order wheeling of bulk power and interconnections of electric utilities and cogeneration.

(2) Hart-Sasser Amendment to encourage cogeneration.

(3) Kennedy Amendment to provide for preconstruction antitrust review of non-nuclear fired power plants.

(4) Bayh Amendment to provide for equitable curtailment of service to retail customers of wholesale power suppliers and purchasers.

(5) Amendments prohibiting "pancaking" of wholesale electric rate increases.

The wheeling, pooling and interconnection amendments are indispensable in ensuring the efficient use of resources, in preventing duplication of transmission lines, and minimizing the number of new generating facilities. They will further help preserve the continued operation of smaller publicly owned utilities.

The antipancaking amendment will prevent undue regulatory lag in deciding wholesale rate increases, would eliminate problems involving refunds of overcharges, and would prevent the loss of working capital for wholesale purchasers.

(6) Brooke Amendment enabling the Secretary of the Department of Energy to prescribe voluntary guidelines concerning the determination of costs, load management systems and ratemaking methods to ensure that state regulatory agencies have the necessary information available for the determination of efficient rate structures.

(7) Brooke Amendment empowering the Secretary to issue advisory guidelines to reduce or eliminate master metering. Recent studies show that master metering consumes nearly 30 percent more energy than individual metering.

(8) Brooke Amendment to reform the present inequities and waste in the fuel adjustment clause.

(9) An amendment to require states to establish certain procedures before service to customers can be cut off. Last winter, many low income families suffered tragically when service was discontinued because they could not afford to pay their exhorbitant utility bills.

We believe that the above mentioned reforms are sorely needed. The electric utility industry has been saddled with increasing fuel costs, declining efficiency in the use of generating capacity, as well as steeply rising costs of expanding capacity. These circumstances have led to skyrocketing energy costs for all American families, as well as the un-

necessary consumption of valuable fuels. Declining efficiency has and could result in expensive and often unwarranted expansion of plant capacity.

None of the amendments mentioned above remove the power of the state regulatory authorities. They are intended to insure greater effectiveness and fairness by the state agencies to encourage more efficient use of our valuable natural resources, and to ensure more equitable rate-setting procedures.

The Energy Policy Task Force of the Consumer Federation of America strongly urges your support of these amendments.

Sincerely,

LEE C. WHITE,
Chairman.
ELLEN BERMAN,
Director.

COLUMBUS SOUTHERN,
Columbus, Ohio.

DEAR SHAREHOLDER: This quick note is written as a matter of extreme urgency. In order to protect your interests, it is imperative that you immediately write, call, or wire your Congressional Representatives in Washington and urge them to defeat any measure now being considered by the House Rules Committee to limit debate and amendments to the National Energy Policy Bill (H.R. 8444) which the House is expected to vote on the middle of this week (week of August 1).

It is vital that you do everything you can—and please urge your acquaintances to do likewise—to stop what amounts to a "railroading" of a national energy bill through the House that will effectively transfer regulation of all the electric utilities in the nation to the bureaucrats in Washington.

This House bill, as it now stands, will have the effect of raising electric rates by unsound rate re-structuring, needless regulatory delays at the federal level, and, most importantly, will thwart future economic and industrial growth by reducing or eliminating jobs for our people who will not have any—or not enough—electric energy to work with.

There are many aspects to this bill, but its essential thrust—and make no mistake about it—is an attempted power grab by Washington Federalists at the expense of the States.

Attached you'll find a summary of the National Energy Act as it now stands.

Perhaps the most damaging amendment calls for increasing control at the federal level . . . it endows the Federal Power Commission (FPC) with nearly all the responsibilities now being effectively managed at the state and local levels. We question what background the government brings to justify their taking over a predominant share of management authority of electric utilities in our state. Further, the reputation for efficiency and management expertise among Washington organizations leaves something to be desired.

Under these amendments, FPC would be supervising and reviewing ratemaking activities of the Public Utilities Commission of Ohio, significantly reducing the ability to address the problems of the people of the state of Ohio. FPC would have final decision on what kinds of power plants and what type of transmission lines are to be built and every other major factor that we believe is better decided by the people who built this state's electric service . . . decisions best monitored by a state regulatory body, like the Ohio Power Siting Commission or Ohio Environmental Protection Agency. Certainly one of our biggest concerns is that the regulatory process is too involved now. Building a generation station is about 60% paperwork and takes as long as 15 years to complete. With more federal control, more delays are inevitable.

Other amendments deal with stringent qualifications for directors of investor-owned utilities, subsidized residential rates, advertising suppression, et. al. Curiously enough, public-owned systems are all exempt from these amendments. We feel that these amendments do not coincide with the national energy objectives, and indeed are not compatable with President Carter's original proposal.

We feel that you should not be denied the right to have these issues given further examination.

Right now, this bill is in the hands of your Senators and Congressmen. We urge you to contact them and ask what purpose these proposed amendments will serve.

Do they fulfill the need for realistically priced energy or do they increase rates to pay for increased regulation?

Do these amendments effectively make local and state regulatory agencies into rubber stamp organizations?

Won't more regulatory delays cost jobs?

Are these anti-free enterprise amendments? We believe they are.

Your effort to discuss this matter with your Senator is of vital importance.

R. J. GRUESER.

MISSISSIPPI POWER & LIGHT CO.,
Jackson, Miss., July 22, 1977.

YOUR HELP IS NEEDED NOW! ENERGY PLAN THREATENS NATION!

To all Mayors of MP&L service area:

The very survival of the United States as a free nation is threatened by the administration's so-called "National Energy Act," now pending in the House of Representatives in H.R. 6831, "National Energy Act," and a companion piece of legislation in the Senate. It is a direct attack on a vast segment of the private enterprise sector of unbelievable magnitude!

Immediate contacts are needed now with Senators and Representatives in the Congress of the United States in opposition to this drastic legislation.

The proposals will result in energy famine for the United States, exorbitant prices, and ultimate nationalization of the energy industry. When this happens, the free enterprise system which has made our country great will be doomed! It is just that serious.

On the attached pages I have summarized briefly in my own words, but more importantly in the words of others, some of the implications of this legislation for you and for our country. You will note from parts of the attached materials that this program holds most serious dangers for the South and Southwest and should be vigorously opposed by people in these areas.

It is not a national energy plan; it is an energy famine plan; it is a doomsday plan.

Congress is going to act on this legislation in early August. (Because of this time consideration, it has not been possible to personalize this letter as I would have liked to do. Unless the American people are heard from, this legislation will become law.

I earnestly hope that you will contact Senators and Representatives in Congress in opposition to this legislation, and that you will communicate with friends, relatives and business connections in other parts of the country, urging them to do likewise.

Please reproduce the enclosed summary and send it to other officials and opinion leaders, if you think it will be helpful. In opposing these far-reaching proposals our company is not simply opposing the administration, but we are simply fighting for our customers and Mississippians as a whole.

Thank you for your efforts in helping to save your country.

Sincerely,

DONALD C. LUCKEN.

Enclosure.

EXHIBIT 2

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
Washington, D.C., September 30, 1977.

HON. EDWARD W. BROOKE,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BROOKE: It has come to our attention that when S. 2114, The Public Utilities Regulatory Policy Act of 1977, comes to the Senate floor, you will offer an amendment which would provide and enlarge authority for Federal grants to assist regulatory commissions and non-regulated utilities such as electric cooperatives and municipally owned systems in improving rate design, load management techniques, and related energy conservation practices.

Rural electric cooperatives, together with the other segments of the electric utility industry are most anxious to cooperate with Federal authorities in conserving energy and in designing rate schedules, load management techniques, insulation programs, and other procedures calculated to achieve that purpose. The major difficulty, however, is that none of these concepts are susceptible to valid theoretical analysis. Therefore, the effectiveness of conservation oriented rate design and load management plans can only be proven by actual application in practice. In addition, there are very substantial differences between public response curves to various energy conservation techniques depending on the particular geographical locality and population mix to which they are applied. For all of these reasons we feel that the program which you propose for funding demonstration projects designed to measure the conservation effectiveness of various electric utility rate schedules, load management techniques and consumer premises insulation procedures would be extremely valuable.

The National Rural Electric Cooperative Association is the National service organization for over 900 non-profit cooperative type electric utility systems which serve more than 25 million consumers in the sparsely populated agricultural areas of 46 states. I am certain that our people will welcome your proposal and will be eager to participate in any program which it makes possible.

Very sincerely yours,

CHARLES A. ROBINSON, Jr.,
Deputy General Manager.

SEPTEMBER 30, 1977.

HON. EDWARD W. BROOKE,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BROOKE: I understand that when S. 2114, the Public Utilities Regulatory Policy Act of 1977, comes to the floor of the Senate you intend to offer an amendment which would continue and expand authority for Federal funding of demonstration projects designed to improve rate design, encourage load management, and develop conservation practices. American Public Power Association, which represents more than 1,400 local public power systems in 48 States, supports this goal.

The amendment would (a) make it clear that local public power systems and rural electric cooperatives are eligible to participate in Federal rate, load management, and conservation demonstration projects, and to receive financial and technical assistance in carrying out such efforts; and (b) extend for another two years and raise the level of authorized appropriations for grants for this program.

During Congressional hearings on portions of President Carter's national energy plan related to electric rates and conservation, APPA testified that:

"Federal leadership in encouraging con-

servation-oriented rate structures should be based on operating data from experimental programs that have effectively demonstrated their success in reaching target conservation goals. We support a continuation and expansion of sound Federal and locally supported experimental programs to weigh the effectiveness of load management and/or time differentiated rates. The current programs for rate structure and load management experiments now partially funded by FEA and ERDA should be greatly increased in number, types of systems involved, geographical areas and resource, and load mix.

"A Federal rate information program could provide a neutral arena to display the results of all ongoing rate experiments. The current arguments which have raged over various rate structures and their possible contributions to efficiency, conservation, and equity, are extremely difficult to evaluate. Often proponents of special approaches toward rate structures have contributed to this confusion by overselling the virtues and downplaying the weaknesses of their special points of view—and often, in extravagant statements. Such active partisan promotion of these views has often been useful, for otherwise it is possible that these ideas might not have been given the attention they deserved. The Federal government could play a vital role in providing "hard" information to all segments of the electric industry and to the general public concerning the impact of various proposed rate structures on power use and power costs. The industry and consumers generally would benefit from this service. Such a Federal rate information service should be factual, timely and unbiased. Assumptions, when they are required, should be totally revealed. The material should be presented in a clear and objective manner. The information should be based on the statistics which are gathered as part of Federal and local programs and in conjunction with electric rates and use data generally gathered by the government."

APPA believes that your suggested amendment to S. 2114 would help achieve these aims.

Enclosed for your information is a resolution on retail rates approved by APPA members at the Association's 1977 annual conference.

Sincerely,

LARRY HOBART.

PUBLIC CITIZEN,
Washington, D.C., September 28, 1977.

DEAR SENATOR: Public Citizen strongly urges you to support the amendments to S. 2214, the Public Utilities Regulatory Policy Act of 1977, offered by Senators Brooke, Cranston, Percy, Hart, Riegle, and Anderson.

When President Carter unveiled his energy plan, only one part provided the potential for direct dollar savings for consumers—reform of electric utility rates. The plan, as originally conceived, could have provided the following benefits:

1. Elimination of wasteful competition between the states for industry; which led to anti-consumer rate schedules;

2. Savings of 250,000 barrels of oil per day;

3. 50,000 megawatt reduction in capacity requirements; this translates into a $13 billion net savings in the cumulative capital requirements for the utility sector (one new nuclear plant has a capacity of 1,000 megawatts).

Unfortunately, the Energy and Natural Resources Committee eliminated much of the legislation, thereby undercutting the impetus for rate reform by the states and consumer savings. The proposed amendments would put the legislation back on track.

The arguments for reform are overwhelming. In recent years the electric utility industry has been afflicted with a number of complex problems. These include declining load factors, increasing fuel costs, rapidly rising costs of new capacity, lower than expected plant reliability and a virtual end to the economies of scale associated with increasing the size of generating plants. Load factor, the ratio of average utility load to peak load, is a measurement of the efficiency with which a utility uses its existing generating capacity. Between 1965 and the present, the average annual load factor has been declining—reflecting a substantial reduction in utility generation efficiency. In the past five years the cost of fuel has risen approximately 400%. Plant capacity costs continue to rise steeply as evidenced by a 68% rise, between 1970 and 1975, in the costs per kilowatt of new plant capacity.

This presents three problems. First, higher costs have meant much higher electric bills for the consuming public. Second, increasing inefficiency has resulted in consumption of scarce fuels and increasing U.S. reliance on imported fuels. Third, declining efficiency has resulted in a costly, and unnecessary, expansion of capacity.

While some utilities and States have begun experiments to eliminate the waste and inefficiencies, many have not. Unfortunately, many states assume, whether correctly or not, that significant reform of their electric utility rate structure would jeopardize their economic base. This belief has been strengthened by lobbying and other efforts by large industrial corporations in recent State debate on the question. Additionally for rate reform to be accomplished sensibly, it should be accompanied by the kinds of cost data which many regulatory authorities have neither required nor been furnished. And, finally rate design reform needs adequate and trained staff. Many state regulatory authorities have been understaffed and unable to implement rate design reform. For example, as late as the end of 1975, Delaware had only 7 full-time employees at its regulatory commission.

The amendments begin to address some of these problems. With funding for state commissions, some of the staffing problems will be removed. Voluntary guidelines will provide the state regulatory authorities with the necessary base of information to properly construct new and efficient rate structures; and finally, the Secretary of Energy should have the right to be a true advocate for reform, and therefore the right to appeal from those regulatory decisions which are arbitrary, capricious or not based on substantial evidence.

There are other amendments that also deserve your careful consideration. During the past winter, some senior citizens were not able to pay their very high utility bills. As a result, their electricity and/or gas was shut off. Injury and occasionally death resulted. To insure that this winter does not provide more such horror stories, an amendment will be introduced to require states to establish minimum procedures before service can be terminated.

There is almost unanimous agreement that centrally metered buildings use more energy than buildings with individual meters. An amendment will be introduced which will allow the Secretary to establish voluntary guidelines regarding master metering. In comparison tests, buildings with master meters used approximately 30% more energy.

To insure efficient use of scarce fuels, an amendment may also be offered which would encourage more efficient use of fuel and limit the waste potential of the fuel adjustment clauses. We encourage your support of this amendment as well.

None of these amendments undermine state authority. Rather they provide information and financial assistance to the states, and the prod of federal advocacy to insure that minimum reform occurs. These amendments would help make state regulation effective, rather than the sham it now so obviously is, and they promote the kind of economical use of energy that we should all support. A vote against these amendments or against the bill, in our view, will be a vote for utilities, big business, efficiency and energy waste.

Sincerely yours,

MARK GREEN.
MARTIN H. ROGOL.

DEPARTMENT OF ENERGY,
Washington, D.C., October 4, 1977.

Hon. EDWARD W. BROOKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BROOKE: In response to your request for comments, the Administration supports the amendments you and your co-sponsors are offering to S. 2114, the proposed Public Utility Regulatory Policy Act. These amendments provide for:

Financial assistance for State regulatory agencies;

Voluntary guidelines with respect to ratemaking, automatic adjustment clauses, and master metering; and

Appeal rights for the Federal Government in cases where it intervenes pursuant to S. 2114.

I welcome these efforts to strengthen the capability of the Department of Energy to assist State utility agencies and increase the potential effectiveness of utility rate modernization efforts.

State efforts are needed to achieve energy savings and protect consumer interests but only a few State and local authorities have the necessary manpower and financial resources. Your proposed amendment would help overcome this problem.

The voluntary guidelines amendments preserve the primacy of the States in utility regulation and assure that State policies will not be mandated by the Federal Government. They provide, however, that the Federal Government will propose new procedures and the States will consider them.

The final amendment provides for appeal rights in those cases where the Federal Government intervenes in State regulatory proceedings, pursuant to S. 2114. If the Department of Energy is to be effective, it should have the right to appeal adverse rulings to State courts like any other party.

The Administration proposed and the House supported a different approach to utility rate modernization. If, however, the approach contained in S. 2114 were to be favored by Congress, it should be implemented in as effective a manner as possible. Your amendments would significantly assist in achieving this goal.

The amendments you and your co-sponsors have proposed would aid the Federal Government and State utility commissions to ensure that regulatory policies promote conservation in accord with the unique needs and circumstances of each State.

Sincerely,

JAMES R. SCHLESINGER,
Secretary of Energy.

[From the Washington Post, Sept. 19, 1977]

THE ENERGY BILL

President Carter's energy plan is now halfway through Congress, and it's time to take stock. As the legislation now stands, it provides neither a complete strategy for the next eight years, nor any great protection in the interim against foreign disruptions and price rises. The President's plan has one primary purpose: to reduce this country's dangerous dependence on foreign oil. The bill, as the House passed it, does not promise to reduce oil imports. It would only hold

down the rate at which things are getting worse. That is the central thought to keep in mind, as the Senate now threatens to throw out large sections of the plan.

The history of this massive bill, over the summer, is interesting mainly as further demonstration of the very narrow limits of political possibility in regard to energy. Most of Congress understands perfectly well the need to cut down. But it is exceedingly difficult to persuade people to make provision for a shortage of which there is no visible sign yet. There is also great uncertainty among the experts over the effects of rigorous energy conservation on the national economy. With the unemployment rate back up over 7 percent, not many people in Congress are inclined to try anything that might interfere with economic growth.

As it passed the House, the legislation would cut oil consumption mainly by pushing industry and utilities more heavily onto coal as their primary fuel. Most of the rest of the gain would be picked up through conservation. The method is a series of carrot-and-stick devices, mostly imposing higher prices, sometimes accompanying them with tax credits for investing in insulation or more efficient machinery.

The legislation has serious flaws, but some of them were inevitable. It is, for example, far too complex and rambling. But that only reflects the reality that the country has not arrived at any consensus on energy policy. The authors of the bill have attempted, as usual, to splice together various irreconcilable ideas of efficiency and fairness. That can't be remedied. But the Senate is in a position to fix another defect, the lack of strong incentives for new oil and gas production in the United States. The administration drew up the bill on the assumption that it was impossible to raise domestic production much, and a waste of money to try. That rather pessimistic judgment may well prove to be correct, but it deserves to be tested more vigorously than the House bill permits.

The outlook for this legislation in the Senate, unfortunately, is not promising. Last week the Energy Committee voted to throw out the whole section on electricity rates in response to a spurious states'-rights argument. If the senators do not like the tangled provisions of the House bill, they can improve its language. But it is absurd to say that there is no national interest in reforming rates to discourage wasteful and expensive patterns of using power. Beyond that, and much worse, a number of senators are now organizing an attack on the crude-oil tax that is basic to the whole Carter plan. The tax would raise the price of most oil products—including gasoline, but not home-heating oil—by 7 cents or more per gallon over the next three years.

If the crude-oil tax is defeated, there will be little left in the energy program but a slow-moving effort to push industries into greater use of coal. The Carter plan has consistently underestimated the difficulties of a widespread expansion of coal production and use. Shifting oil-fired industrial boilers to coal is a necessary part of a national energy plan. But, by itself, it is very far from adequate.

For all of its shortcomings, the House energy bill is a creditable and, you could even say, courageous attempt to meet a national danger that is genuine. The chances of working out a better bill next year are very poor, since 1978 is an election year. If the Senate now throws out large pieces of the bill, the effect can be measured in increased vulnerability of the American economy to the shocks and surges of a radically unstable world oil supply.

[From the Boston Globe, Sept. 16, 1977]

SHORTCIRCUITING REFORM

The Senate Energy Committee has cut out an important innovation in energy management by excising from the Administration's bill a provision for national guidelines for the regulation of electric utilities. Unless the proposal can be restored by amendment on the floor of the Senate, the House version should prevail when the bill goes to conference.

The main thrust of the Administration proposal was to make electric utilities charge rates that reflect more accurately the actual costs of generating the electricity and getting it to customers. It would have banned automatic reductions in rates for large users except where actual economies of scale could be demonstrated. It would have encouraged higher rates for users during peak hours and peak seasons. And it would have expanded consumer-complaint opportunities and limited the domination by bankers and businessmen of the boards of directors of utilities.

Utilities have fought the proposal with great vigor. Their complaints have centered on the inability of a national regulatory policy to reflect local conditions that are well understood by state regulatory commissions. It is at least refreshing to hear words of support for state commissions—not often voiced in recent years.

But the important principle involved in the bill is one of treating electric-rate reform on a national rather than a state-by-state basis. Last year an attempt was made in Massachusetts to introduce flat rates. The Globe opposed that proposal on the grounds that it would tend to place Massachusetts industry at a disadvantage with industries in neighboring states. The Administration proposal gets around that problem by guaranteeing that no state would gain undue advantage over any other by structuring below-cost rates for business to lure it from other areas.

There are aspects of the bill that could be argued. The provisions for limiting directorships seem overblown, for example. But opposition from the utility industry is also overblown—a reflection of its conservatism and resistence to change. Congress has an opportunity to work real rate reform into the energy bill and it should reverse the Senate Energy Committee's stand as soon as possible.

EMINENT DOMAIN AND THE MANDAN PROJECT

Mr. McGOVERN. Mr. President, the Senate has approved the seasonal diversity electricity exchange amendment to S. 2114—the Public Utilities Regulation Policy Act.

This amendment, essentially, provides for the constructing authority to utilize the power of eminent domain to obtain right-of-way and construction rights for a transmission line running between Manitoba, Canada, and certain points in Nebraska. It is basically for an exchange of power between the Nebraska Public Power District and the Province of Manitoba.

This line, however, will run through the States of North and South Dakota. The two principal cooperatives in the direct area involved, Basin Electric Power Cooperative of Bismarck, N. Dak., and the East River Electric Power Cooperative of Madison, S. Dak., have taken an "officially neutral" position on this line which is known as the "Mandan project."

This neutrality, however, does not—and should not—imply total agreement at this point with the concept of the Mandan project. We are obviously concerned that the Dakotas have an opportunity to participate in this power exchange to the full extent we are capable of doing so.

Basin Electric, while taking part in the feasibility study of the project, has not, thus far, signed on as an active participant. East River Electric which, to a degree, depends on Basin generating capacity, is not taking part. To me, this means we granted the right of eminent domain to a power line crossing two States, when the States are not participants in the power exchange at this time. Beyond that, I am somewhat troubled with the proposed extension of eminent domain authority in a matter such as this. South Dakota has not, in recent years, had a very good experience with mandatory acquisition of private land and/or right-of-way privileges.

For example, the Oahe irrigation project, whose funding for the current fiscal year was denied by the Senate, lost some degree of local support because of eminent domain. The proposal by the Energy Transportation Systems, Inc. (ETSI), for eminent domain authority to construct a coal/slurry pipeline from the western coal fields to Arkansas has not thus far found favor in the Congress.

A compelling case can be made that if this line has merit, that it could be constructed under a "willing buyer—willing seller" concept rather than reverting to the extraordinary procedure of eminent domain.

I very much hope that the proponents of the Mandan Line will be prepared to make some accommodation with power interests in South Dakota and North Dakota. Unless this is done, it is certainly possible that this matter may, again, be brought before the Congress.

Mr. JOHNSTON. Will the Senator yield?

Mr. BROOKE. Yes.

Mr. JOHNSTON. It is the feeling of the majority and minority that we should not have any votes after 7 p.m. I am wondering whether we would be in a position to vote on any of the Senator's amendments prior to that time. If not, with the Senator's concurrence, we could announce there would be no more votes this evening.

Mr. BROOKE. No, we would not be able to vote prior to 7 p.m. on any of my amendments.

Mr. JOHNSTON. Very well. Could the Senator tell us when we would be in a position to vote on his first amendment?

Mr. BROOKE. We have several Senators who want to speak. This is the first amendment that I would call up, the one for which I had mentioned to the distinguished majority leader I needed 2 hours.

Mr. JOHNSTON. Will the Senator repeat that, please?

Mr. BROOKE. The majority leader and I had entered into an agreement, which was subsequently ratified by the Senate, that I will cut the time for my amendments to 1 hour, those that had 2 hours, with the exception of one amendment which requires 2 hours. The one that I will call up first requires 2 hours. There are other speakers on that amendment.

Mr. JOHNSTON. Is the Senator saying he would prefer to vote tomorrow?

Mr. BROOKE. Yes.

Mr. ROBERT C. BYRD. I wonder if we can set a time to vote on the amendment. Would 10 o'clock be satisfactory? We are starting on the bill at 9 a.m.

Could we vote on the Senator's amendment at 10?

Mr. BROOKE. What time will the distinguished majority leader convene the Senate tomorrow morning?

Mr. ROBERT C. BYRD. We will start on the bill at 9 a.m. We may have some special orders. In any event, those special orders will be pushed ahead of 9 o'clock so we would begin at 9 o'clock on the Senator's amendment.

Mr. BARTLETT. I understand there will be a meeting for western Senators at the White House the first thing in the morning. I wonder if we can back it up to 11 o'clock and then proceed with the amendments of the Senator from Massachusetts.

Mr. ROBERT C. BYRD. I do not want to hold up votes. We have already used some of the time tonight. I would hesitate to say no votes until 11 o'clock because surely those Republicans will not be at the White House until 11 o'clock.

Mr. BARTLETT. They will be there at least until 10:30.

Mr. ROBERT C. BYRD. I would hope that we could vote at 10 o'clock. They are having breakfast, are they not?

Mr. BARTLETT. This is a meeting of the Western Senators, not Republican Senators.

Mr. BROOKE. I am trying to be of assistance to the distinguished majority leader.

Mr. ROBERT C. BYRD. I was hoping to set a vote for 10 o'clock, but perhaps we should just take it as it comes.

Mr. JOHNSTON. May we assure Senators that there will be no more votes tonight?

Mr. ROBERT C. BYRD. Yes. We will begin at 9 o'clock tomorrow morning on this bill. Can we agree on that?

Mr. JOHNSTON. Yes.

Mr. BARTLETT. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BARTLETT. Would there be any objection, if some Senators cannot be here, that we would just put it off a little bit?

Mr. ROBERT C. BYRD. We certainly want to do everything we can to accommodate the Western Senators. I thought it might be possible to agree on a vote at 10 o'clock. If we cannot, we will not persist in the effort. I thank the Senator for yielding.

Mr. President, if the Senator will allow me, I will note that there will be no more rollcall votes this evening.

Mr. BROOKE. Mr. President, I yield to the Senator from Illinois for a question.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, there has been a reversal in the economics of electric power generation in the last decade. Ten years ago electric companies were still building powerplants bigger and bigger, reaping thereby the benefits of economies of scale. Plenty of low-cost imported oil seemed to be available. Electric rates continued their historic decline.

Today, oil and gas markets are both sellers' markets. Engineers seem to have reached the limit of improvements in powerplant efficiency to be derived from building them bigger. General inflation, and attendant rises in the cost of money, have hit capital-intensive industries especially hard. Environmental damage from powerplants is something we are now willing to prevent, added cost notwithstanding. Electric bills have soared accordingly.

The basic economies of the utility industry have been fundamentally altered. Unfortunately, political and institutional change often lags economic change. Policies governing the electricity business have not caught up with the hard facts. Electric rates still encourage volume use of power by charging less per unit as consumption increases. Moreover, utilities have been reluctant to adopt rate schedules which charge customers according to the time of day they use electricity which could help lessen the impact of peak loads, in addition to how much they use it.

State regulatory commissions have the authority to implement electric rate reform, but two powerful barriers obstruct action. Rate reform within one State is extremely difficult: some businesses which benefit from volume discounts could pack up and leave. In addition, State public utility commissions often lack the expertise and funding to perform the arduous task of redesigning electric rates.

The result, as Dr. Chichetti of the Wisconsin Public Service Commission told the Energy Committee recently, is that only four States nationwide have implemented or are about to implement electric rates which reflect the true costs of providing service to different classes of customers.

Mr. President, the distinguished minority members of the House Committee on Interstate and Foreign Commerce made the following comment when reporting out its version of the utility rate reform bill:

> The basic principle of . . . basing electric utility rates on the cost of providing electric service is an eminently sound one. The cost-of-service principle strikes the appropriate balance between the need to provide adequate funds for the generation of electricity and the need to provide adequate price signals to consumers to avoid the wasteful use of electricity.

Mr. President, we must change the presumption of the status quo. Some Federal levers are needed to promote rate structure reform in order to conserve both energy and investment capital. That is why I support the Brooke amendments to the Public Utilities Regulatory Policy Act, S. 2114.

Mr. President, I also wish to state that I am sympathetic with those who oppose the House version of this utility reform legislation. That bill would set explicit Federal standards for the entire country. It would authorize the Federal Government to take over State regulatory functions and also to deprive electric utilities of needed rate increases in cases of noncompliance.

It is possible that the challenge of rate reform will at some future time prove so difficult that a largely expanded Federal role will be warranted. Today, however, I cannot in good conscience support a Federal takeover of so many State prerogatives. I therefore oppose the House version of the reform legislation.

At the same time, the utility legislation as reported by the Energy Committee will generate only paper, not action. The Department of Energy is directed to make annual reports to Congress on rate designs and their financial implications. DOE is given the authority to submit testimony in State evidentiary hearings, and to pay State commissions to collect data. I realize that to mandate studies is a politically low-cost solution to issues on which there are strong opposing views, but in this instance, such studies are worse than no action. They will delay urgently needed rate reform pending the outcomes of the studies. Such a situation is intolerable.

Mr. President, the Brooke amendments establish a formula which allows a Federal role before State commissions, but prevents actual takeovers of utility commission and electric company rights. The Secretary of Energy would be allowed to intervene in State rate hearings, as he would be under the Energy Committee bill, S. 2114. The Secretary would also have the right to set guidelines for cost-of-service-based rates in individual States.

Judicial review of State commission decisions could be sought in State courts. The Secretary of Energy could not seek temporary injunctions against utilities or commissions. Any actions taken would be civil, not criminal.

These amendments, unlike the Energy Committee bill, allow the Secretary to step into State ratemaking processes. Unlike the House bill, they do not allow the Secretary to step on the State commissions. It is because of this distinction that I support these amendments. I hope that my colleagues will join in a recognition of the need for electric rate reform.

Mr. President, I should like to propose a few questions to the author of the amendments (Mr. BROOKE).

I ask him, first, how many States today have cost-of-service electric rates?

Mr. BROOKE. I say to my distinguished colleague that some claim that they do. DOE says none really has established cost of service according to true economic principles.

Mr. PERCY. How many States have moved to eliminate volume discounts in rate structures?

Mr. BROOKE. Many have improved their structures, but none has generally eliminated it.

Mr. PERCY. How many States have time-of-day electric rates?

Mr. BROOKE. They have mandatory rates in some areas—New York, Wisconsin, California, and Michigan. One will have it next year; that is Virginia. Two have voluntary time-of-day rates. Those are Pennsylvania and Vermont.

Mr. PERCY. How about time-of-day electric rates for residential consumers?

Mr. BROOKE. I say to my colleague, none that I know of.

Mr. PERCY. So that, really, even though the utilities have a tremendous problem of raising money now for additional plant capacity, we still are not doing anything through the pricing mechanisms to really move us toward minimizing the peak loads. It is the peak loads that require the capacity now.

My distinguished colleague confirms,

then, that very little is being done. So leaving it to the States simply is not an adequate answer. The States are not doing enough.

Mr. BROOKE. Precisely.

Mr. PERCY. The States have rights, but the States are sitting on those rights. Certainly, if we ever had a national problem, we have one in the energy problem. It us up to the Federal Government to say that this is now established national policy. The States must then conform to that and adapt their policy so it meets the national need. Is that right?

Mr. BROOKE. That is exactly correct. My distinguished colleague has stated the case very clearly and succinctly.

I might add to what he has said that we are not even trying, as some have said, to regulate at all. We are not trying to take the regulation away from the States. We are merely hereby establishing national guidelines that they can follow. They should take them under serious consideration, to be sure, but they are not even mandated under this amendment to take those national guidelines. But they must give them serious consideration.

That is the very least that can be done in order to get the States moving, because, as the distinguished Senator from Illinois has said, the States are not doing it.

Mr. PERCY. Has not the distinguished Senator from Massachusetts heard that same old refrain many, many times before—States' rights, leave those rights to the States, let the States, in their sovereign capacity, act? We have adopted a consensus that we have a national problem—certainly the Congress, the President, and every one else realizes that we have an energy problem. We have it, and it has been imposed upon us from the outside, by our own consumption, and by our failure to take into account that energy supplies are finite, not infinite. In times past, have we ever really moved on a problem until we said, "Look, we have a problem, now let us adopt a policy and have the States conform to that?" Is that not true in this very case?

Mr. BROOKE. Exactly.

Mr. PERCY. How many State public utility commissions have held hearings on rate structures, and then declined to implement them? And what were the reasons for the negative decisions?

Mr. BROOKE. I touched on this subject in my opening statement. Twelve States have refused to act after holding hearings on rate reform. They all pleaded lack of knowledge of the impact of their decisions.

Mr. PERCY. Can the distinguished Senator from Massachusetts give us any indication as to reports that have told us how much energy and money we would save from full implementation of rate reform? What is the potential saving?

Mr. BROOKE. Yes. The Project Independence energy information system says 250,000 barrels a day; that is $13 billion net savings.

Mr. PERCY. The distinguished Senator knows that both the Commerce Committee and the Committee on Governmental Affairs have been studying regulatory reform for the past year or so. One of the recurring problems that comes up is the delay involved in the whole regulatory process. I want to be absolutely certain that we understand the implications of the distinguished Senator's amendments, as to whether they would contribute to regulatory delay.

The investment community, for instance, is seriously worried that the Dingell-Moffett provisions in H.R. 8444 would delay rate proceedings and cause serious financing problems. This certainly is of great interest to a Senator representing the investment community in Boston. James O'Connor of Commonwealth Edison in Chicago informs me that his company considers delay in proceedings, and the financing problems that might result, to be very serious. Would the Senator's amendments cause any delay in regulatory proceedings?

Mr. BROOKE. Let me assure the distinguished Senator from Illinois that it would not. My answer is emphatically no. The Secretary would be just one more party in a scheduled proceeding. While consideration of rate policy issues may take longer than passing on simple increases, that hardly qualifies as redtape bureaucracy.

I think that would be an appropriately deliberate process, so I do not think we have to worry. I think the investment community should be relieved of its fears, because there is no necessity for it at all by this provision in the bill.

Mr. PERCY. Would the Secretary of Energy be allowed to become a party to a suit in which one of the parties asked for an injunction against an electric company?

Mr. BROOKE. No, the Secretary can only be a party to the appeal. I want to make that clear, because that question has been raised by some of my other colleagues. He is only a party to the appeal. He is not allowed to seek an injunction. If another party seeks an injunction, the Secretary cannot support the request.

The PRESIDING OFFICER. The Senator's 30 minutes have expired.

Mr. BROOKE. I ask for an additional 2 minutes.

Mr. BARTLETT. I yield an additional 2 minutes to the distinguished Senators.

Mr. BROOKE. The Senator from Illinois has had long experience in the business community, with a very distinguished record as an executive of Bell and Howell. He is very knowledgeable about business matters. I would like to ask how he feels about the economic effect of these statements?

Mr. PERCY. I have taken a look at this. Incidently, I wish to state for the record that I did not do this by traveling around in Bell & Howell corporate jets. They are nonexistent, I understand. But I have made a few surveys.

James O'Connor, whom I have mentioned already, of Commonwealth Edison, and other utility industry figures, oppose the House provisions because of concern about delay in regulatory proceedings. To allow the Federal Government to preempt State commissions, and to hold rate increases hostage, creates such problems.

But the Brooke amendments allow no injunctive relief, and no preemption. DOE would have no rights in a proceeding other than those granted any other intervenor. The Brooke amendment will not lead to delay, so far as the Senator from Illinois can determine.

Dr. Irwin Stelzer, vice president of National Economic Research Associates, a utility consulting firm says there can be no effect on utility financing if there is no delay. He feels the Brooke amendments are acceptable.

Mr. Tony Osborne, utility analyst with Salomon Bros., says since the amendments create no authority to affect a final determination in a rate case, they create no problems.

James McCabe and John Kellenyi, utility analysts from Donaldson, Lefkin & Jenrette, have written that the President's proposals, which go much further than the Brooke amendments, would have no adverse impact on utilities' ability to raise capital.

So I think the evidence is rather conclusive there would be no adverse effect whatever on raising capital.

Mr. BROOKE. I thank my distinguished colleague. I have always respected his business acumen, and those others who he cited in his remarks. It gives me encouragement.

I assure him and others that is my intent with these amendments. I am very pleased to have him say unequivocally this would not be an adverse economic effect.

So I am most pleased to have shared in this colloquy with my distinguished colleague from Illinois. I thank him for his original statement, for his responses, and for his questions.

Mr. PERCY. I thank my distinguished colleague.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. BARTLETT. Mr. President, I ask unanimous consent that there be a quorum call with neither side being charged time.

The PRESIDING OFFICER. Is there objection?

Mr. BROOKE. Will the Senator withhold that?

Mr. BARTLETT. Yes, I withold it.

Mr. BROOKE. Mr. Persident, I would like to say to the distinguished majority leader, in view of the fact that I have had a colloquy on the floor already with one of the Senators, I will enter into a unanimous-consent agreement for all of my amendments to be reduced to an hour, if that would be helpful.

Mr. ROBERT C. BYRD. May I say that I have been asked by Senator DURKIN to not enter into any agreement on any amendments while he was off the floor.

But I thank the Senator for his consideration.

The PRESIDING OFFICER. Who yields time?

Who yields time? Time will be charged to both sides.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 11:30 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6655) to amend certain Federal laws pertaining to community development, housing, and related programs.

The message also announced that the House agrees to the amendments of the Senate to the amendments of the House to the bill (S. 1522) to increase the appropriations authorized for fiscal years 1977 and 1978 and to authorize appropriations for fiscal year 1978 to carry out the Marine Mammal Protection Act of 1972, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Without amendment:

S. Res. 286. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 897. Referred to the Committee on the Budget.

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

With an amendment:

S. 2100. A bill for the improvement of Roberts Field, Redmond, Oregon (Rept. No. 95-470).

By Mr. CRANSTON, from the Committee on Human Resources:

With an amendment:

S. 2108. A bill to amend the Indochina Migration and Refugee Assistance Act of 1975 to extend the period during which refugee assistance may be provided, and for other purposes (Rept. No. 95-471).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary: Roy A. Smith, of Ohio, to be U.S. marshal for the southern district of Ohio.

Barry E. Teague, of Alabama, to be U.S. attorney for the middle district of Alabama.

M. Karl Shurtliff, of Idaho, to be U.S. attorney for the district of Idaho.

Anton T. Skoro, of Idaho, to be U.S. marshal for the district of Idaho.

Franklin Payne, of Missouri, to be U.S. marshal for the eastern district of Missouri.

Edward L. Shaheen, of Louisiana, to be U.S. attorney for the western district of Louisiana.

Rafael E. Juarez, of Colorado, to be U.S. marshal for the district of Colorado.

Edward N. Kelilkoa, of Hawaii, to be U.S. marshal for the district of Hawaii.

Jacob V. Eskenazi, of Florida, to be U.S. attorney for the southern district of Florida.

Harvey N. Johnson, Jr., of Illinois, to be U.S. marshal for the northern district of Illinois.

William L. Brown, of Wisconsin, to be U.S. marshal for the eastern district of Wisconsin.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Stanley J. Roszkowski, of Illinois, to be U.S. district judge for the northern district of Illinois.

Edward H. Johnstone, of Kentucky, to be U.S. district judge for the western district of Kentucky.

Louis F. Oberdorfer, of Virginia, to be U.S. district judge for the District of Columbia.

Thomas Tang, of Arizona, to be U.S. circuit judge for the ninth circuit.

Nicholas J. Bua, of Illinois, to be U.S. district judge for the northern district of Illinois.

Hugh H. Brownes, of New Hampshire, to be U.S. circuit judge for the first circuit.

A. Leon Higginbotham, Jr., of Pennsylvania, to be U.S. circuit judge for the third circuit.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that he presented the following enrolled bills to the President of the United States:

On September 30, 1977:

S. 1435. An Act to amend the Federal Election Campaign Act of 1971 to extend the authorization of appropriations contained in such Act; and

On October 5, 1977:

S. 667. An Act to declare certain federally owned land held in trust by the United States for the Te-Moak Bands of Western Shoshone Indians.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. THURMOND:

S. 2174. A bill to permit the leasing and transfer of flue-cured tobacco allotments or quotas in certain disaster areas for the year in which such disaster occurred; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURKIN (for himself and Mr. HATHAWAY):

S. 2175. A bill to amend section 232 of the Trade Expansion Act of 1962 to prohibit the President from increasing the rate of duty on imports of petroleum and petroleum products in the absence of a national military emergency; to the Committee on Finance.

By Mr. STONE (for himself and Mr. CHILES):

S. 2176. A bill to provide for the establishment of a Veterans' Administration outpatient clinic in Broward County, Florida; and

S. 2177. A bill to provide for the construction of a Veterans' Administration hospital in Broward County, Florida; to the Committee on Veterans' Affairs.

By Mr. ZORINSKY:

S. 2178. A bill for the relief of Mrs. Maria Avola; to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 2179. A bill to permit pharmacists to use generic drugs in the filling or refilling of prescriptions made by physicians; to the Committee on Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND:

S. 2174. A bill to permit the leasing and transfer of Flue-cured tobacco allotments or quotas in certain disaster areas for the year in which such disaster occurred; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. THURMOND. Mr. President, I am introducing legislation today which will allow the Secretary of Agriculture to permit the lease and transfer of Flue-cured tobacco allotments and quotas across county lines when farmers in certain areas have suffered a substantial loss to their tobacco crop. The bill is designed to assist producers of Flue-cured tobacco who have incurred damage to their tobacco crop from inclement weather or other natural disaster conditions. Under current legislation, transfer of Flue-cured tobacco allotments across county lines is prohibited under any circumstances.

Mr. President, a substantial loss in their tobacco crop places many farmers in a financial strain. They are in need of working capital for the next crop year, and can obtain some of this by leasing their unused poundage to some other producer who was fortunate enough to have produced excess tobacco. In some instances, such an arrangement may enable the farmers who have suffered a loss to continue their farm operations.

Mr. President, legislation was adopted in 1973, 1974, and 1976 which would allow the cross-county transfer of tobacco quotas or allotments for that year. Cross-county leases were allowed when one or more counties experienced a loss of 10 percent or more in the number of acres planted or expected production from the planted acreage and when the leases and transfer would not impair the effective operation of the tobacco marketing quota or price support program. Specifically, this legislation would give the Secretary of Agriculture the permanent authority to permit the transfer of Flue-cured tobacco quotas for any year when certain emergency conditions exist. It would allow owners and operators of a farm which has suffered a loss of 10 percent or more in the number of acres of tobacco planted or the expected production from the planted acreage in a qualifying county to make transfers. Transfers could be made to a farm in the same or any other county within the same State and to a farm having a current tobacco allotment or quota of the same kind of tobacco.

In the past, by the time the need for this type emergency legislation was established and legislation could be introduced and acted upon, it was not in time to be of any help to the farmers who needed it. For example, just this year legislation has been introduced in the House of Representatives, H.R. 9143, which would allow the cross-county transfer of tobacco quotas for 1977 for certain disaster areas in South Carolina. However, the tobacco markets in South Carolina will be closing in just a couple of weeks, and it does not appear the schedule in the House and Senate will permit passage of this legislation.

Additional impetus is given to the need and justification for the legislation I am introducing by a letter dated September 21, 1977, from the Secretary of Agriculture, the Honorable Bob Bergland, to the chairman of the House Agriculture Committee, the Honorable Thomas

S. Foley. The letter, in reference to the position of the Department of Agriculture on H.R. 9143, notes similar legislation was introduced in 1973, 1974, and 1976. In addition, the Secretary states:

In light of these experiences, it would appear more appropriate to enact legislation authorizing cross-county transfers under specified disaster conditions and not specify counties, States and crop years.

Mr. President, the legislation I am introducing offers a solution to the problems associated with enacting emergency cross-county leasing in certain years for specified areas while maintaining the intent and spirit of emergency cross-county leasing of tobacco. This legislation would be of great benefit, in years of disastrous weather conditions, to tobacco farm families by allowing them to transfer their unused tobacco quotas across county lines.

Mr. President, I send the bill to the desk, and ask unanimous consent that it be referred to the appropriate committee for prompt consideration, and that it be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2174

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 316(1) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1314b(1)), is amended to read as follows:

"(1)(1) Notwithstanding any other provision of this section, when as a result of drought, flood, damage due to excessive rain, hail, wind, tornado, or other natural disaster, the Secretary determines that with respect to any crop of flue-cured tobacco—

"(A) any county has suffered a loss of 10 per centum or more in the number of acres of such tobacco planted (or expected production from planted acreage), and

"(B) that a lease of all or a portion of the flue-cured tobacco allotment or quota of such county will not impair the effective operation of the marketing quota or price support program,

the Secretary may permit the owner or operator of any farm within any such county which has suffered a loss of 10 per centum or more in the number of acres of flue-cured tobacco planted (or expected production from the planted acreage) of such crop to lease all or part of the allotment or quota for such farm to any other owner or operator in the same county, or other county within the same State, for use in such same county or other county in such crop year on a farm or farms having a current flue-cured tobacco allotment or quota.

"(2) In no case may a lease and transfer be made under this subsection of all or part of a farm acreage allotment or quota between farms in two different counties unless one or both of such counties has suffered a loss as described in clause (B) of paragraph (1) of this subsection.

"(3) In the case of a lease and transfer by an owner or operator in one county to an owner or operator in another county pursuant to this subsection, the lease and transfer shall not be effective until a copy of the lease is filed with and determined by the county committee of the county to which the transfer is made to be in compliance with the provisions of this subsection.".

By Mr. DURKIN (for himself and Mr. HATHAWAY):

S. 2175. A bill to amend section 232 of the Trade Expansion Act of 1962 to prohibit the President from increasing the rate of duty on imports of petroleum and petroleum products in the absence of a national military emergency; to the Committee on Finance.

Mr. DURKIN. Mr. President, ever since the first OPEC oil embargo, the economic life of new Hampshire and New England has hung by a slender thread, our industry and consumers forced to depend on unpredictable and expensive imports for over half our oil needs. We can neither live with nor without that oil.

Now, energy czar James Schlesinger threatens the administration will cut that thread by imposing $5 per barrel fee on imported oil if the Congress doesn't enact a tax on domestic crude oil. Secretary Schlesinger's threat, if realized, would be nothing less than a declaration of economic warfare on the people of New Hampshire and New England. That being the case, I hope to deny the administration the ammunition they need to fire the first shots across our bow.

Today Senator HATHAWAY and I are introducing legislation to amend the Trade Expansion Act of 1962, as amended, to prevent the administration from imposing additional fees on imported oil. Congressman MARKEY is introducing an identical measure in the House.

Because we in New Hampshire and New England import more than half our oil, and are more dependent on imports than any other region of the country, a proposal to cut oil imports is a proposal to cut our supplies. A proposal to add a $5 per barrel fee on imported oil is a proposal to increase our cost of gasoline, to increase our cost of home heating oil, and to increase our cost of electricity, which is already the highest in the country. It is a proposal to send shock waves of inflation rippling throughout our entire New England economy. With many New Hampshire and New England citizens going into debt to pay this year's energy bills, it is unthinkable to so substantially increase next year's energy bills.

Additionally, to do so would be to deny what has allegedly been a guiding principle of the President's energy program from its inception—equity. Addressing a variety of regional and economic differences between various energy consumers, the program purports to make all citizens bear equally the sacrifices we will be asked to make. I have been given the President's personal assurances that New Hampshire and New England would be asked for no more than any other region and that the disproportionate energy-cost burden we bear would be alleviated. This is essential to creating a comprehensive and effective energy policy which can unite the Nation around this critical issue. And yet, Secretary Schlesinger tells us the administration is considering a regionally discriminatory import fee, without even the benefit of congressional consideration.

Our amendment, which is in keeping with the equitable principles expressed by President Carter, would prevent the administration from imposing any tariff, duty, fee, or other exaction on imported oil.

Mr. President, this amendment merely says that if we are to enact a comprehensive national energy policy, it must be a policy which does not shift the economic burden to one region of the country but rather distributes it evenly throughout the country. This amendment represents fundamental fairness, and I urge its passage.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2175

Be it enacted by the Senate and House of Representatives of the United States of America assembled, That this Act may be cited as the "Imported Oil Tax Prohibition Act of 1977."

SEC. 2. Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the President shall have no authority to impose any tariff, duty, fee or other exaction nor otherwise adjust imports of petroleum or petroleum products other than for periods for which—

"(A) the Congress declares war,

"(B) United States Armed Forces are introduced into hostilities pursuant to specific statutory authorization,

"(C) a national emergency is created by attack upon the United Sttaes, its territories or possessions, or its armed forces, or

"(D) United States Armed Forces are introduced into such hostilities, situations, or places, or are enlarged in any foreign nation, under circumstances which require a report by the President to the Congress pursuant to section 4(a) of the War Powers resolution (50 U.S.C. 1453(a)).

Mr. HATHAWAY. I am pleased to join with Senator DURKIN in introducing this bill to restrain the authority of the President to impose tariffs or duties on imported petroleum products.

On Sunday, October 2, Secretary of Energy Schlesinger threatened to impose a duty on imported oil if Congress failed to adopt the administration's proposed crude oil equalization tax. This is a case of political blackmail. It goes to the heart of New England. The proposed import duty would add $15 billion to the cost of energy in the Northeast, an area with energy costs 30 percent higher than the rest of the Nation.

The President currently has authority to adjust imports under the Trade Expansion Act of 1962, subject to a resolution of disapproval by the Congress. In 1976, the Supreme Court upheld the authority of President Nixon to impose a $2 per barrel duty on crude oil imports.

The bill I am introducing today would amend the Trade Expansion Act to prohibit any tariff, duty, fee or other exaction from being imposed on petroleum or petroleum products after September 30, 1977.

This legislation is necessary to protect the residents of Maine, of the Northeast, and of the country in general, from an arbitrary and capricious use of power by the President attempting to force us to adopt an energy plan which he and his advisers believe to be in the national interest. Clearly, there is room for differ-

ing opinions in energy; but there is no room for a railroad policy which is inimicable to the interest of our constituents and our States.

I ask that the text of FEA against Algonquin SNG, Inc. and the analysis of the joint committee concerning oil imports from the Finance Committee staff study No. 6 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

III. OIL IMPORTS

1. BACKGROUND

The Trade Expansion Act of 1962,[1] delegates to the President discretionary authority to adjust imports to the extent which he deems necessary so that they will not threaten to impair the national security.[2]

Adjustments to limit imports may take the form of either equantitative restrictions, called quotas, or monetary exactions, usually called tariffs, duties, or import license fees.[3]

Currently, specific import license fees of 21 cents and 63 cents are imposed on each barrel of imported crude petroleum or petroleum products, respectively. Statutory import duties of 5 or 10 cents per barrel, depending on the gravity of the oil, are also imposed. However, these duties reduce the amount of the import license fees.

Under the present crude oil entitlements program for U.S. refiners, the average price paid by domestic refiners for a barrel of crude oil is lower than the world price for oil because the entitlements bought and sold by the U.S. refiners results in their cost being an average of all prices paid for crude oil (both domestic and foreign) by all U.S. refiners. The foreign crude oil price used in determining the average price for the present entitlements program does not reflect the cost of the import license fees imposed on foreign crude oil brought into the United States. As a result, U.S. refiners of lower price domestic oil pay refiners of imported crude an entitlement which does not reflect U.S. import fees. Thus, refiners of domestic oil benefit more from the entitlements program than do U.S. refiners of foreign oil because the entitlement program does not require refiners of domestic crude to compensate refiners of foreign crude for the import fees paid by the latter.

The proposed crude oil equalization tax includes the import fees on imported crude in determining the world or market price. Thus, U.S. refiners of domestic crude would lose their current relative advantage vis a vis U.S. refiners of foreign crude.

Some domestic refiners contend that the proposed crude oil tax could put U.S. refiners, who would pay a price equal to the world price plus U.S. import fees for oil, at a disadvantage compared to their current position vis a vis foreign refiners. Some fear that this will result in an increase in foreign refining and more imports or refined petroleum products into the United States with a concomitant decrease in U.S. refining.

On an overall basis, the competitive position of U.S. refiners vis à vis foreign refiners depends on all costs, including, for example, transportation, labor, and taxes, and not just one expense item alone. Therefore, any effects of a crude oil tax on imported products is hard to predict, and even more difficult to measure. Moreover, the President might exercise his authority to adjust import fees, duties, and tariffs (or to impose quotas) if he determines that imports, such as refined petroleum products, threaten to impair the national security.

2. PRESENT LAW

In determining whether any imports threaten to impair the national security, the Trade Expansion Act of 1962 specifically requires the President to consider, without excluding other relevant factors:

(1) domestic production needed for projected national defense requirements;

(2) the capacity of domestic industries to meet projected national defense requirements;

(3) existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense;

(4) the requirements of growth of industries, supplies and services essential to the national defense, including the investment, exploration, and development necessary to assure such growth; and

(5) the importation of goods in terms of their quantities, availabilities, character, and use as those affect industries essential to the national defense and the capacity of the United States to meet national security requirements.

In administering actions taken under this authority, the President must also recognize the close relation of the U.S. economic welfare to national security, and must consider the impact of foreign competition on the economic welfare of individual domestic industries. In addition, any substantial unemployment, decrease in Government revenues, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports are to be considered, without excluding other factors, in determining whether such weakening of the U.S. internal economy may impair the national security.

[No. 75–382. Argued April 20, 1976—Decided June 17, 1976]

FEDERAL ENERGY ADMINISTRATION ET AL. v. ALGONQUIN SNG, INC., ET AL., CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Section 232(b) of the Trade Expansion Act of 1962, as amended by the Trade Act of 1974, provides that if the Secretary of the Treasury finds that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," the President is authorized to "take such action, and for such time, as he deems necessary to adjust the imports of [the] article and its derivatives so that . . . imports [of the article] will not threaten to impair the national security." When it appeared that a prior program established under § 232(b) for adjusting oil imports was not fulfilling its objectives, the Secretary of the Treasury initiated an investigation. On the basis of this investigation the Secretary found that crude oil and its derivatives and related products were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security, and accordingly recommended to the President that appropriate action be taken to reduce the imports. Following this recommendation, the President promptly issued a Proclamation, *inter alia*, raising the license fees on imported oil. Thereafter, respondents—eight States and their Governors, 10 utility companies, and a Congressman—brought suits against petitioners challenging the license fees on the ground, *inter alia*, that they were beyond the President's authority under § 232(b). The District Court denied relief, holding that § 232(b) is a valid delegation to the President of the power to impose license fees on imports, and that the procedures followed by the President and the Secretary in imposing the fees fully complied with the statute. The Court of Appeals reversed, holding that § 232(b) does not authorize the President to impose a license fee scheme as a method of adjusting imports, but encompasses only the use of "direct" controls such as quotas. *Held:* Section 232(b) authorizes the action taken by the President. Pp. 558–571.

(a) Section 232(b) does not constitute an improper delegation of power, since it establishes clear preconditions to Presidential action, including a finding by the Secretary of the Treasury that an article is being imported in such quantities or under such circumstances as to threaten to impair the national security. Moreover, even if these preconditions are met, the President can act only to the extent he deems necessary to adjust the imports so that they will not threaten to impair the national security, and § 232(c) sets forth specific factors for him to consider in exercising his authority. Pp. 558–560.

(b) In authorizing the President to "take such action and for such time, as he deems necessary to adjust the imports of [an] article and its derivatives," § 232(b)'s language clearly grants him a measure of discretion in determining the method used to adjust imports, and there is no support in the statute's language that the authorization to the President to "adjust" imports should be read to encompass only quantitative methods, *i.e.*, quotas, as opposed to monetary methods, *i.e.*, license fees, of effecting such adjustments; so to limit the word "adjust" would not comport with the range of factors that can trigger the President's authority under § 232(b)'s language. Pp. 561–562.

(c) Furthermore, § 232(b)'s legislative history amply indicates that the President's authority extends to the imposition of monetary exactions, *i.e.*, license fees and duties, and belies any suggestion that Congress, despite its use of broad language in the statute itself, intended to confine the President's authority to the imposition of quotas and to bar him from imposing a license fee system such as the one in question. Pp. 562–571.

171 U.S. App. D.C. 113, 518 F. 2d 1051, reversed and remanded.

Marshall, J., delivered the opinion for a unanimous Court.

Solicitor General Bork argued the cause for petitioners. With him on the briefs were *Assistant Attorney General Lee, Mark L. Evans, Leonard Schaitman*, and *David M. Cohen*.

Francis X Bellotti, Attorney General of Massachusetts, and *Harold B. Dondis* argued the cause for respondents. With them on the brief were *S. Stephen Rosenfeld* and *Thomas R. Kiley*, Assistant Attorneys General, *James S. Hostetler, William F. Griffin, Jr.*, and *William R. Connole*.*

Mr. Justice Marshall delivered the opinion of the Court.

Section 232(b) of the Trade Expansion Act of 1962, 76 Stat. 877, as amended by § 127(d) of the Trade Act of 1974, 88 Stat. 1993, 19 U.S.C. § 1862(b) (1970 ed., Supp. IV), provides that if the Secretary of the Treasury finds that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," the President is authorized to

"take such action, and for such time, as he deems necessary to adjust the imports of [the] article and its derivatives so that . . . imports [of the article] will not threaten to impair the national security."[1]

All parties to this case agree that § 232(b) authorizes the President to adjust the imports of petroleum and petroleum products

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[1] Public Law 87–794 (as amended).

[2] Section 232(b).

[3] In *Federal Energy Administration* v. *Algonquin SNG, Inc.* 426 U.S. 548 (1976), the Supreme Court upheld as proper under section 232(b) of the Trade Expansion Act of 1962, Presidential action changing from adjustment of oil imports through quotas to adjustment through the imposition of monetary exactions called import license fees.

Footnotes at end of article.

by imposing quotas on such imports. What we must decide is whether § 232 (b) also authorizes the President to control such imports by imposing on them a system of monetary exactions in the form of license fees.

I

The predecessor statute to § 232(b) was originally enacted by Congress as § 7 of the Trade Agreements Extension Act of 1955, c. 169, 69 Stat. 166, see n. 21, *infra*, and amended by § 8 of the Trade Agreements Extension Act of 1958, Pub. L. 85–686, 72 Stat. 678. The advisory function currently performed under § 232(b) by the Secretary of the Treasury was performed by the Director of the Office of Defense Mobilization (ODM) under the 1955 and 1958 statutes. But, like § 232(b), those statutes allowed the President, on a finding that imports of an article were threatening "to impair the national security," to "take such action as he deem[ed] necessary to adjust the imports of [the] article. . . ." In 1959, President Eisenhower, having been advised by the Director of ODM that "crude oil and the principal crude oil derivatives and products are being imported in such quantities and under circumstances as to threaten to impair the national security,' " invoked the 1958 version of the provision and established the Mandatory Oil Import Program (MOIP). Presidential Proclamation No. 3279, 3 CFR 11 (1959–1963 Comp.). The MOIP, designed to reduce the gap between domestic supply and demand by encouraging the development of domestic production and refinery capacity, imposed a system of quotas on the importance of petroleum and petroleum products.

The program was not wholly successful, however, and in the face of domestic consumption which continued to grow faster than domestic production, Presidents Kennedy, Johnson, and Nixon each felt compelled to amend it by raising the permissible quota levels. App. 211–212.

In light of a Cabinet task force conclusion that the MOIP, as then constituted, was not fulfilling its objectives,[2] President Nixon, acting pursuant to § 232(b), radically amended the program in 1973. Presidential Proclamation No. 4210, 3 CFR 31 (1974). The President suspended existing tariffs on oil imports and provided "for a gradual transition from the existing quota method of adjusting imports of petroleum and petroleum products to a long-term program for adjustment of imports of petroleum and petroleum products through . . . the institution of a system of fees applicable to imports of crude oil, unfinished oils, and finished products . . ." *Id.*, at 32. This amended program established a gradually increasing schedule of license fees for importers. With respect to crude oil, the fee was scheduled to increase from an initial 10½ cents per barrel on May 1, 1973, to 21 cents per barrel on May 1, 1975. With respect to most finished petroleum products, the fee was to rise gradually from 15 cents per barrel on May 1, 1973, to 63 cents per barrel on November 1, 1975,[3] *Id.*, at 36. While initially some oil imports were exempted from the license fee requirements, the exemption levels were scheduled to decrease annually so that by 1980 the fees would be applicable to all oil imports.

President Nixon's 1973 program apparently did not wholly fulfill the objectives to which it was directed. Accordingly, the Secretary of the Treasury, acting pursuant to § 232(b), see n. 1, *supra*, initiated an investigation on January 4, 1975, "to determine the effects on the national security of imports of petroleum and petroleum products." Memorandum from Secretary of the Treasury Simon to Assistant Secretary of the Treasury MacDonald (Simon Memorandum), App. 154. While § 232(b) directs the Secretary "if it is appropriate [to do so, to] hold public hearings or otherwise afford interested parties an opportunity to present information and advice" as part of such an investigation, 19 U.S.C. § 1862 (b) (1970 ed., Supp. IV) the Secretary found that such procedures would interfere with "national security interests" and were "inappropriate" in this case. Simon Memorandum, App. 154. The investigation therefore proceeded without any public hearing or call for submissions from interested governmental parties.

The Secretary submitted a report on his investigation to President Ford on January 14, 1975. Intimating that the measures then in force under § 232(b) had indeed not solved the problems to which they were directed, the Secretary indicated that the United States' dependence on foreign oil had continued to increase since 1966 and that foreign sources currently accounted for well over a third of domestic consumption. The Secretary concluded that

"crude oil, principal crude oil derivatives and products, and related products derived from natural gas and coal tar are being imported into the United States in such quantities as to threaten to impair the national security [and] the foregoing products are being imported into the United States under such circumstances as to threaten to impair the national security." App. 133.

On the basis of these findings, the Secretary recommended to the President that

"appropriate action be taken to reduce imports of crude oil, principal crude oil derivatives and products, and related products derived from natural gas and coal tar into the United States. . . ." *Ibid.*

The President agreed with the findings of the Secretary's investigation and concluded that it was necessary and consistent with the national security to further discourage importation into the United States of petroleum, petroleum products, and related products. . . ." Presidential Proclamation No. 4341, 3A CFR 2 (1975). Invoking § 232(b), he issued a Proclamation on January 23, 1975, which, effective immediately, raised the so-called "first-tier" license fees that were imposed in 1973, see *supra*, at 553, to the maximum levels previously scheduled to be reached only some months later.[4] Presidential Proclamation No. 4341. The Proclamation also imposed on all imported oil, whether covered by the first-tier fees or not, a supplemental fee of $1 per barrel for oil entering the United States on or after February 1, 1975. The supplemental fee was scheduled to rise to $2 a barrel for oil entering after March 1, 1975, and to $3 per barrel for oil entering after April 1, 1975.[5] Finally, the Proclamation reinstated the tariffs that had been suspended in April 1973. Soon after issuance of the Proclamation, the Federal Energy Administration (FEA) amended its oil import regulations in order to implement the new program. 40 Fed. Reg. 4771–4776 (1975).

Four days after the Proclamation was issued, respondents—eight States and their Governers,[6] 10 utility companies,[7] and Congressman Robert F. Drinan of Massachusetts—challenged the license fees in two suits filed against the Secretary of the Treasury, the Administrator of the FEA, and the Treasurer of the United States in the United States District Court for the District of Columbia. Seeking declaratory and injunctive relief, they alleged that the imposition of the fees was beyond the President's constitutional and statutory authority, that the fees were imposed without necessary procedural steps having been taken, and that petitioners (hereinafter the Government) violated the National Environmental Policy Act of 1969 (NEPA) 83 Stat. 852, 42 U.S.C. § 4321 *et seq.*, by failing to prepare an environmental impact statement prior to the imposition of the fees.

The District Court denied respondents' motions for preliminary injunctions and filed findings of fact and conclusions of law which, at the request of respondents, it later declared to be final. See 171 U. S. App. D. C. 113, 124, 126, 518 F. 2d 1051, 1062, 1064 (1975) (appendix to dissenting opinion in Court of Appeals). The court found that § 232(b) is a valid delegation to the President of the power to impose license fees on oil imports. *Id.*, at 128–129, 518 F. 2d, at 1066–1067. It further ruled that the procedures followed by the President and the Secretary of the Treasury in imposing the license fees fully conformed to the requirements of the statute. *Id.*, at 130, 518 F. 2d, at 1068. Finally, the court held that "in view of the emergency nature of the problem and the need for prompt action," *id.*, at 131, 518 F. 2d, at 1069, the Government was not required to file an environmental impact statement prior to imposition of the fees and hence was not in violation of the NEPA. *Ibid.*

Respondents appeals from these judgments were consolidated with their petitions to the Court of Appeals for the District of Columbia Circuit for review of the FEA regulations implementing the license fee program. The allegations in the challenges to the regulations were substantially the same as those raised in the District Court actions, adding only a contention that the FEA had failed to follow certain procedural provisions of the Federal Energy Administration Act, 88 Stat. 97, 15 U.S.C. §§ 761 *et seq.* (1970 ed., Supp. IV). The Court of Appeals, with one judge dissenting, held that § 232(b) does not authorize the President to impose a license fee scheme as a method of adjusting imports. 171 U.S. App. D. C. 113, 518 F. 2d 1051 (1975). According to the court, reading the statute to authorize the action taken by the President "would be an anomalous departure" from "the consistently explicit, well-defined manner in which Congress has delegated control over foreign trade and tariffs." *Id.*, at 117, 518 F. 2d, at 1055. In the court's view, § 232 (b)'s legislative history indicated that Congress' authorization of the President to "adjust the imports of [an] article" encompassed only the use of "direct" controls such as quotas and did not encompass the use of license fees. *Id.*, at 121, 518 F. 2d, at 1059. Finding no need to address any of the other issues that were raised, the court reversed the judgment of the District Court, instructed that court to enter appropriate relief for respondents, and set aside the challenged FEA regulations.

We granted the Government's petition for certiorari, 423 U.S. 923 (1975),[8] and now reverse. Both the language of § 232(b) and its legislative history lead us to conclude that it authorizes the action taken by the President in this case.[9]

II

A

Preliminarily, we reject respondents' suggestion that we must construe § 232(b) narrowly in order to avoid "a serious question of unconstitutional delegation of legislative power." Brief for Respondents 42. Even if § 232(b) is read to authorize the imposition of a license fee system, the standards that it provides the President in its implementation are clearly sufficient to meet any delegation doctrine attack.

In Hampton & Co. v. United States, 276 U.S. 394 (1928), this Court upheld the constitutionality of a provision empowering the President to increase or decrease import duties in order to equalize the differences between foreign and domestic production costs for similar articles. There, the Court stated:

"If Congress shall lay down by legislative act an intelligible principle to which the [President] is directed to conform, such legislative action is not a forbidden delegation of legislative power." Id., at 409.

Section 232(b) easily fulfills that test. It establishes clear preconditions to Presidential

Footnotes at end of article.

action—inter alia, a finding by the Secretary of the Treasury that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." Moreover, the leeway that the statute gives the President in deciding what action to take in the event the preconditions are fulfilled is far from unbounded. The President can act only to the extent "he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security." And § 232(c), see n. 1, supra, articulates a series of specific factors to be considered by the President in exercising his authority under § 232(b).[10] In light of these factors and our recognition that "[n]ecessity . . . fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules . . .," American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946), we see no looming problem of improper delegation[11] that should affect our reading of § 232(b).

B

In authorizing the President to "take such action, and for such time, as he deems necessary to adjust the imports of [an] article and its derivatives," the language of § 232(b) seems clearly to grant him a measure of discretion in determining the method to be used to adjust imports. We find no support in the language of the statute for respondents' contention that the authorization to the President to "adjust" imports should be read to encompass only quantitative methods—i.e., quotas—as opposed to monetary methods—i.e., license fees—of effecting such adjustments.

Indeed, reading respondents' suggested limitation into the word "adjust" would be inconsistent with the range of factors that can trigger the President's authority under § 232(b)'s language. Section 232(b) authorizes the President to act after a finding by the Secretary of the Treasury that a given article is being imported "in such quantities or under such circumstances as to threaten to impair the national security." (Emphasis added.) The emphasized language reflects Congress' judgment that "not only the quantity of imports . . . but also the circumstances under which they are coming in: their use, their availability, their character" could endanger the national security and hence should be a potential basis for Presidential action. 104 Cong. Rec. 10542–10543 (1958) (remarks of Rep. Mills). It is most unlikely that Congress would have provided that dangers posed by factors other than the strict quantitative level of imports can justify Presidential action, but that that action must be confined to the imposition of quotas. Unless one assumes, and we do not, that quotas will always be a feasible method of dealing directly with national security threats posed by the "circumstances" under which imports are entering the country, limiting the President to the use of quotas would effectively and artificially prohibit him from directly dealing with some of the very problems against which § 232(b) is directed.

Turning from § 232's language to its legislative history, again there is much to suggest that the President's authority extends to the imposition of monetary exactions—i.e., license fees and duties. The original enactment of the provisions in 1955 as well as Congress' periodic reconsideration of it in subsequent years gives us substantial grounds on which to conclude that its authorization extends beyond the imposition of quotas to the type of action challenged here.

During congressional hearings on the Trade Agreements Extension Act of 1955, there was substantial testimony that increased imports were threatening to damage various domestic industries whose viability was perceived to be critical to the national security.[12] In an effort to deal with the problem, the Senate Committee on Finance considered several proposals designed to supplement the existing statutory provision, known as the Symington Amendment,[13] that barred reductions in duties "on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements." Act of July 1, 1954, Pub. L. 464, § 2, 68 Stat. 360.[14] Among these amendments was one proposed by Senator Neely which provided in relevant part:

"[T]he President shall take *such action as is necessary* to restrict imports of commodities whenever such imports threaten to retard the domestic development and expansion or maintenance of domestic production of natural resource commodities or any other commodities which re determines to be essential to the national security. . . ." Hearings on H.R. 1 before the Senate Committee on Finance, 84th Cong., 1st Sess., 1033 (1955) (hereinafter cited as 1955 Senate Hearings) (emphasis added).[15]

In explaining what action would be authorized under the Neely Amendment, Senator Martin, one of its cosponsors, explained that it authorized the President "to take such action as is necessary, including the imposition of import quotas *or the increase in duties*, to protect the domestic industry concerned." 1955 Senate Hearings 2097 (emphasis added). Thus, the Neely Amendment clearly would have given the President the authority to impose monetary exactions as a method of restricting imports.

While the Neely Amendment was not reported out of committee, it is strikingly similar in language to the Byrd-Millikin Amendment—the substitute provision that was reported out and eventually enacted into law. The Byrd-Millikin Amendment authorized the President, after appropriate recommendations had been made by the Director of the ODM, to "take such action as he deems necessary to adjust the imports of [an] article to a level that will not threaten to impair the national security." S. Rep. No. 232, 84th Cong., 1st Sess., 14 (1955).[16] Given the similarity in the operative language of the two proposals, it is fair to infer that if, as Senator Martin stated, the Neely Amendment was intended to authorize the imposition of monetary exactions, so too was the Byrd-Millikin Amendment.

The debate on the Senate floor lends further support to this reading of the Byrd-Millikin Amendment. Senator Millikin himself stated without contradiction that the Amendment authorized the President "to take whatever action he deems necessary to adjust imports . . . [including the use of] tariffs, quotas, import taxes or other methods of import restriction." 101 Con. Rec. 5299 (1955). As a statement of one of the legislation's sponsors, this explanation deserves to be accorded substantial weight in interpreting the statute. *National Woodwork Mfrs. Assn.* v. *NLRB*, 286 U.S. 612, 640 (1967); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394–395 (1951).[17]

Senator Millikin's statement does not stand alone. Senator Byrd, another of the Amendment's sponsors, explained in colloquy with Senator Saltonstall that the Amendment put all commodities "on the same basis as agricultural commodities. It simply leaves to the President the power, in his discretion, to decide whether to impose a quota or to reduce the imports." 101 Cong. Rec. 5297 (1955) (emphasis added). The reference in the emphasized phrase is to § 22 of the Agricultural Adjustment Act, the subject of an earlier exchange between Senator Byrd and Senator Thye. 101 Cong. Rec. 5296 (1955). Section 22 allows the President under certain circumstances to "impose such fees . . . on such quantitative limitations" as he finds necessary to protect the domestic production of an agricultural commodity. 49 Stat. 773, as amended, 7 U.S.C. § 624(b) (emphasis added). Senator Byrd's comparison of § 22 and the Byrd-Millikin Amendment thus appears to reflect his understanding that Presidential authority under the Amendment extended to the imposition of fees.[18]

Finally, we note two other statments on the floor of the Senate which lend direct support to the Government's reading of the Byrd-Millikin Amendment. Senator Bennett stated that it was his understanding that the amendment would authorize use of "the entire scope of tariffs, quotas, restrictions, stockpiling, and any other variation of these programs in order to protect a particular industry." 101 Cong. Rec. 5588 (1955).[19] And Senator Barkley, a member of the Senate Committee on Finance, expressed his understanding that the Amendment would allow the President to "impose such quotas or take such other steps as he may believe to be desirable in order to maintain the national security." Id., at 5298 (emphasis added).

In the House debate following Senate passage of the Byrd-Milliken Amendment, *id.*, at 5655, and its acceptance with a minor modification by the House conferees, H.R. Conf. Rep. 745, 84th Cong., 1st Sess., 2, 6–7 (1955), we find further indications that the Amendment authorized the imposition of monetary exactions. In explaining the provisions of the Amendment, Congressman Cooper, chairman of the House Ways and Means Committee and a member of the Conference Committee, indicated his concern that *"any modification of a duty* on imports or a quota would [because of retaliation from abroad] inevitably result in a curtailment of exports by the United States." 101 Cong. Rec. 8161 (1955) (emphasis added). Furthermore, as part of his explanation of the Amendment, Cooper presented a letter he had received from Gerald D. Morgan, Special Counsel to the President, which expressed the Administration's understanding that under the Amendment, the President's action to adjust imports "could take any form that was appropriate to the situation." *Id.*, at 8162.[20] Thus, when Congress finally enacted the Byrd-Millikin Amendment's national security provision, 69 Stat. 166,[21] as part of the Trade Agreement Extension Act of 1955, not only had Members of both Houses indicated that the provision authorized the imposition of monetary exactions, but the Executive Branch, too, had advised the Congress of its understanding of the broad scope of the authority granted by the Amendment.[22]

Three years later, in the context of its consideration of the Trade Agreements Extension Act of 1958, Congress re-examined the Byrd-Millikin national security provision. In the course of its deliberations, the Subcommittee on Foreign Trade Policy of the House Ways and Means Committee had before it a 1957 report submitted to it by the ODM, expressing the views of the Executive Branch that "the imposition of new or increased tariff duties on imports . . . [was] authorized by the language adopted."[23] Fully aware that the Executive Branch then, as in 1955, understood the provision as authorizing the imposition of monetary exactions, the Committee did not recommend any change in its wording to confine more narrowly the bounds of its authorization. On the contrary, the Committee in its report indicated with approval its own understanding that the statute provided "those best able to judge national security needs . . . [with] a way of taking *whatever action is needed* to avoid a threat to the national security through imports." H. R. Rep. No. 1761, 85th Cong., 2d Sess., 13 (1958) (emphasis added).

While Congress in 1958 made several procedural changes in the statute and established criteria to guide the President's determination as to whether action under the

Footnotes at end of article.

provision might be necessary, it added no limitations with respect to the type of action that the President was authorized to take.[24] § 8, 72 Stat. 678. The 1958 reenactment, like the 1955 provision, authorized the President under appropriate conditions to "take such action" "as he deems necessary to adjust the imports. . . ." *Ibid.*

When the national security provision next came up for re-examination, it was reenacted without material change as § 232(b) of the Trade Expansion Act of 1962. In its analysis the Court of Appeals placed great emphasis on the fact that in the course of Congress' deliberations the Senate passed and the Conference Committee deleted, H.R. Conf. Rep. No. 2518, 87th Cong., 2d Sess., 13 (1962), an amendment which provided:

"Notwithstanding any other provision of law, the President may, when he finds it in the national interest, proclaim with respect to any article imported into the United States—

"(1) the increase of any existing duty on such article to such rate as he finds necessary;

"(2) the imposition of a duty on such article (if it is not otherwise subject to duty) at such rate as he finds necessary, and

"(3) the imposition of such other import restrictions as he finds necessary." 108 Cong. Rec. 19573 (1962).

The Court of Appeals inferred from the rejection of this amendment that Congress understood the then existing grant of authority to be limited to the imposition of quotas. According to the court, the amendment would have "explicitly [given] the President the same authority he claims derives implicitly from § [232(b),]" 171 U.S. App. D.C., at 121, 518 F.2d, at 1059, and Congress' refusal to enact the amendment was tantamount to a rejection of the Government's interpretation of the statute.

We disagree, however, with the Court of Appeals' assessment of the proposed amendment. The amendment was in reality far more than an articulation of the authority that the Government finds to be contained in § 232(b). Unlike § 232(b), the rejected proposal would not have required a prior investigation and findings by an executive department as a prerequisite to Presidential action. Moreover, the broad "national interest" language of the proposal, together with its lack of any standards for implementing that language, stands in stark contrast with § 232(b)'s narrower criterion of "national security" and § 232(c)'s articulation of standards to guide the invocation of the President's powers under § 232(b). In light of these clear differences between the rejected proposal and § 232(b), we decline to infer from the fact that the Senate amendment was proposed, or from the fact that it was rejected, that Congress felt that the President had no power to impose monetary exactions under § 232(b).

Only a few months after President Nixon invoked the provision to initiate the import license fee system challenged here, Congress once again re-enacted the Presidential authorization encompassed in § 232(b) without material change. Trade Act of 1974, Pub. L. 93–618,, 88 Stat. 1993. Making no mention of the President's action, both the Senate Committee report and the conference report recited the language of the statute itself to reaffirm that under § 232(b) the President "may . . . take such action, and for such time, as he deems necessary, to adjust imports so as to prevent impairment of the national security." H.R. Conf. Rep. No 93–1644. p. 29 (1974); S. Rep. No. 93–1298. pp. 96–97 (1974). The congressional acquiescence in President Nixon's action manifested by the re-enactment of § 232(b) provides yet further corroboration that § 232(b) was understood and intended to authorize the imposition of monetary exactions as a means of adjusting imports.

Taken as a whole then, the legislative history of § 232(b) belies any suggestion that Congress, despite its use of broad language in the statute itself, intended to limit the President's authority to the imposition of quotas and to bar the President from imposing a license fee system like the one challenged here. To the contrary, the provision's original enactment, and its subsequent reenactment in 1958, 1962, and 1974 in the face of repeated expressions from Members of Congress and the Executive Branch as to their broad understanding of its language, all lead to the conclusion that § 232 (b) does in fact authorize the actions of the President challenged here. Accordingly, the judgment of the Court of Appeals to the contrary cannot stand.

C

A final word is in order. Our holding today is a limited one. As respondents themselves acknowledge, a license fee as much as a quota has its initial and direct impact on imports, albeit on their price as opposed to their quantity. Brief for Respondents 26. As a consequence, our conclusion here, fully supported by the relevant legislative history, that the imposition of a license fee is authorized by § 232(b) in no way compels the further conclusion that any action the President might take as long as it has even a remote impact on imports, is also so authorized.

The judgment of the Court of Appeals is reversed and this case is remanded to that court for proceedings consistent with this opinion.

So ordered.

FOOTNOTES

*Peter Buck Feller, John D. Heckert, and David M. Repass filed a brief for McClure & Trotter as *amicus curiae* urging affirmance.

[1] Section 232(b) provides in full:

"Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the 'Secretary') shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security."

Section 232 (c) of the Act, 19 U.S.C. § 1862 (c) (1970 ed., Supp. IV) provides the President and the Secretary of the Treasury with guidance as to some of the factors to be considered in implementing § 232 (b). It provides:

"For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to asure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security."

[2] See Cabinet Task Force on Oil Import Control, The Oil Import Question 128 (1970).

[3] Under President Nixon's plan, the fee for motor gasoline was scheduled to reach its maximum of 63 cents on May 1, 1975. App. 97.

[4] The Proclamation did not alter the schedule by which exemptions from the first-tier fees were not to be eliminated until 1980.

[5] The supplemental fee increases scheduled to go into effect in March and April were twice deferred. See Presidential Proclamation No. 4355, 3A CFR 26 (1975); Presidential Proclamation No. 4370, 3A CFR 45 (1975). While the $2 fee finally went into effect on June 1, 1975, Presidential Proclamation No. 4377, 3A CFR 53 (1975), it was never increased to $3. Indeed, on January 3, 1976, President Ford eliminated the $2 fee. Presidential Proclamation No. 4412, 41 Fed. Reg. 1037. See n. 8, *infra*.

[6] The States joining in the suit together with their governors were Connecticut, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. The State of Minnesota intervened as a plaintiff after the complaint was filed and is also a respondent here.

[7] The 10 utility companies are Algonquin SNG, Inc., New England Power Co., New Bedford Gas and Edison Light Co., Cambridge Electric Light Co., Canal Electric Co., Montaup Electric Co., Connecticut Light and Power Co., Hartford Electric Light Co., Western Massachusetts Electric Light Co., and Holyoke Water Power Co.

[8] Subsequent to our granting certiorari, the President signed the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, 42 U. S. C. A. § 6201 *et seq.* (1970 ed., Supp. V). That Act is aimed at encouraging domestic oil production by gradually decontrolling the price of domestically produced crude oil. On January 3, 1976, indicating that "the purposes of the supplemental [oil import license] fee" will be served by the Act, the President announced the elimination of the supplemental fees imposed by Presidential Proclamation No. 4341, 3A CFR 2 (1975). Presidential Proclamation No. 4412, 41 Fed. Reg. 1037. He did not, however, eleminate the "first-tier" fees originally imposed by Presidential Proclamation No. 4210, 3 CFR 31

(1974). Since respondents seek to enjoin the first-tier as well as the supplemental fees, the question here whether § 232(b) grants the President authority to impose license fees remains a live controversy.

[9] Respondents' suits are not barred by the Anti-Injunction Act, 26 U. S. C. § 7421(a), which in relevant part provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . . ." The Anti-Injunction Act applies to suits brought to restrain assessment of taxes assessable under the Internal Revenue Codes of 1954 and 1939. 26 U. S. C. §§ 7421(a), 7851(a)(6)(A), 7851 (a)(6)(C)(iv). The license fees in this case are assessed under neither Code but rather under the authority conferred on the President by the Trade Expansion Act of 1962, as amended by the Trade Act of 1974. The fees are therefore not "taxes" within the scope of the Anti-Injunction Act.

[10] Respondents rely on our decision in *National Cable Television Assn.* v. *United States*, 415 U. S. 336 (1974, to support their delegation doctrine argument. But we find that case clearly distinguishable from the one before us today. In *National Cable Television*, we held that the fees to be imposed on community antenna television systems should be measured by the "value to the recipient" even though the language of the general statute allowing fee setting by federal agencies, 65 Stat. 290, 31 U. S. C. § 483a, permits consideration not only of "value to the recipient" but also of "public policy or interest served, and other pertinent facts." The Court's conclusion that the words of the last-quoted phrase were not relevant to the CATV situation was apparently motivated by a desire to avoid any delegation doctrine problem that might have been presented by a contrary conclusion. 415 U. S., at 342. But what might be considered the open-ended nature of the phrase "public policy or interest served, and other pertinent facts" stands in contrast to § 232(b)'s more limited authorization of the President to act only to the extent necessary to eliminate a threat of impairment to the national security, and § 232(c)'s articulation of standards to guide the President in making the decision whether to act. See n. 1, *supra*.

[11] The amount of oil exempted from the "first-tier" license fees, see *supra*, at 553, imposed in 1973 varies among five geographical districts within the Nation. See Presidential Proclamation No. 4341, 3A CFR 2 (1975), Presidential Proclamation No. 4210, 3 CFR 31 (1974). Respondents seize on this fact to argue that the "first-tier" fee schedule contravenes Art. I, § 8, cl. 1, of the Constitution which requires that import duties be uniform throughout the United States. But that issue is not properly before the Court. Sustaining respondents' Uniformity Clause argument would call, not for invalidation of the entire license fee scheme, but only for elimination of the geographical differences in the exemptions allowed under it. This would represent not an affirmance of the judgments below, which effectively invalidated the entire scheme and its implementing regulations, but rather a modification of those judgments. But since respondents filed no cross-petition for certiorari, they are at this point precluded from seeking such modification. See *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 381 n. 4 (1970).

[12] See, *e.g.*, Hearings on H.R. 1 before the House Committee on Ways and Means. 84th Cong., 1st Sess., 1006 (analytical balance industry), 1264 (petroleum industry) (1955); Hearings on H.R. 1 before the Senate Committee on Finance; 84th Cong., 1st Sess., 602 (lead and zinc mining industry), 721 (coal mining industry) (1955).

[13] The Symington Amendment is currently codified in somewhat modified form at 19 U.S.C. § 1862(a).

[14] In contrast to the Senate Committee on Finance, the House Committee on Ways and Means concluded that the Symington Amendment was adequate to deal with any potential threats to the national security posed by foreign imports. H.R. Rep. No. 50, 84th Cong., 1st Sess., 44 (1955).

[15] A separate portion of the Neely Amendment would have placed quotas on petroleum imports. 1955 Senate Hearings 1033.

[16] Unlike the Neely Amendment, see n. 15, *supra*, the Byrd-Millikin Amendment did not single out any named industries for protection by quotas.

[17] Differing with the Court of Appeals, we do not believe that the fact that Senator Millikin represented a State that might have benefited from an expansive reading of the statute "blur[s] [the] probative value," 171 U.S. App. D.C. 113, 120, 518 F. 2d 1051, 1058 (1975), of his explanation. Many if not most pieces of legislation are sponsored by Members of Congress whose constituents have a special interest in their passage, but we have never let this fact diminish the weight we give a sponsor's statements.

[18] Moreover, Senator Byrd's reference in the above-quoted exchange to the power of the President under the Amendment "to impose a quota *or* to reduce the imports," 101 Cong. Rec. 5297 (1955), also suggests that he understood that power to extend beyond the imposition of quotas. See Note, 89 Harv. L. Rev. 432, 435 n. 31 (1975).

[19] The Court of Appeals characterized Senator Bennett's remarks as going to "the entire bill and other existing laws". 171 U.S. App. D.C., at 119, 518 F. 2d, at 1057. Our examination of the context of his remarks persuades us, however, that they were more probably made with specific reference to the Byrd-Millikin Amendment.

[20] A copy of the Morgan letter was also sent to Senator Byrd, Chairman of the Senate Committee on Finance. See 101 Cong. Rec. 8162 (1955).

[21] As finally enacted the Amendment provided:

"In order to further the policy and purpose of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made to determine the facts. If, on the basis of such investigation, and the report to him of the findings and recommendations made in connection therewith, the President finds that the article is being imported into the United States in such quantities as to threaten to impair the national security, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security."

[22] We are not unmindful that, as respondents point out, much of the congressional debate referred to the Byrd-Millikin Amendment in the context of giving the President the power to impose import quotas. See, *e.g.*, 101 Cong. Rec. 5572 (1955) (remarks of Sen. Humphrey); *id.*, at 5582 5584 (remarks of Sen. Douglas); *id.*, at 5593 (remarks of Sen. Monroney). But nowhere do the congressional debates reflect an understanding that under the Amendment the President's authority was to be *limited* to the imposition of quotas. In light of this fact, we feel fortified in attaching substantial weight to the positive indications discussed above that the authority was not so limited.

[23] Foreign Trade Policy, Compendium of Papers on United States Foreign Trade Policy, Collected by the Staff for the Subcommittee on Foreign Trade Policy of the House Ways and Means Committee 643 (1958).

[24] Indeed, while under the 1955 provision the President was authorized to act only on a finding that "quantities" of imports threatened to impair the national security, the 1958 provision also authorized Presidential action on a finding that an article is being imported "under such circumstances" as to threaten to impair the national security. 72 Stat. 678. See *supra*, at 561.

By Mr. STONE (for himself and Mr. CHILES):

S. 2176. A bill to provide for the establishment of a Veterans' Administration outpatient clinic in Broward County, Fla.; and

S. 2177. A bill to provide for the construction of a Veterans' Administration hospital in Broward County, Fla.; to the Committee on Veterans' Affairs.

Mr. STONE. Mr. President, today I am introducing two bills to provide for the establishment of a Veterans' Administration health care facility in Broward County, Fla. The first bill calls for the establishment of a veterans' hospital, and the second bill would provide for a VA outpatient clinic.

On August 10, 1977, I wrote to Dr. John Chase, the Chief Medical Director of the Veterans' Administration, requesting that the VA conduct a study of the Broward County area in order to determine the need for a VA health facility. I have not received a reply to my letter. In response to several other letters to the VA requesting that it consider locating a health facility in Broward County, the only response I received is that there are no plans to establish such a facility. Mr. President, Broward County veterans can wait no longer for action by the Veterans' Administration.

As of December 31, 1976, there were 108,353 veterans living in Broward County, most of whom are elderly and served in World War I or World War II. The nearest VA hospital is in Miami, 24 miles away from Fort Lauderdale, the Broward County seat. The nearest VA outpatient clinic is 40 miles from Fort Lauderdale in West Palm Beach and it is more remote. Many of the veterans in Broward are unable to drive and the public transportation to these facilities is inadequate because local governments have not been able to keep up in recent years with the tremendous population growth. The veterans hospital in Miami is overcrowded so that veterans must often wait hours to see a doctor, and the treatment received is not always up to the high standards which veterans deserve. Furthermore, the need for a veterans' health care facility in Broward County becomes greater every day. Estimates are that between 800 and 1,000 veterans move to this county every month.

Recently, the Governor and the cabinet of the State of Florida adopted a resolution recognizing the critical need for a medical facility in Broward County and urging that the Veterans' Administration establish such a facility in an accessible location. I ask unanimous consent that this resolution be printed along with my remarks. I have received similar resolutions from the City Councils of North Lauderdale, Plantation, and Tamarac. I would also like to note that companion legislation has been introduced in the House by Representative J. HERBERT BURKE, who for years has

sought to have a facility established in Broward County to provide health care for the many veterans living there.

Mr. President, I hope that my colleagues agree with me that Broward County, Fla., veterans deserve better treatment from the VA and will join in support of this legislation.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, the Governor and Cabinet recognize and appreciate the vital and honored services rendered to our state and nation by the many veterans of Florida who have protected our national defense and preserved our democratic institutions and way of life, and

Whereas, the Governor and Cabinet fully support proper and convenient medical care for veterans in this state and throughout the nation in recognition of their contributions and sacrifices for the defense of our people, and

Whereas, numerous veterans and veteran organizations such as the Broward County Veterans Council, representing mobile chapters of the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, the Retired Officers Association, Fleet Reserve, Paralyzed Veterans Association, World War I Barracks, and other veteran and auxiliary organizations, have expressed need for a Veterans Administration Out-Patient Medical Facility to be located in Broward County, and

Whereas, although there is a Veterans Hospital in Miami, travel by an out-patient from Broward County often represents great hardship because of the distance involved and extended delay at the Miami Veterans Administration Hospital which cannot accommodate the influx of ever-increasing Dade and Broward veterans requiring medical attention, and

Whereas, although Palm Beach County has an out-patient veterans facility in Riviera Beach, the population of Broward County is almost double that of adjoining Palm Beach County, and the facility at Riviera Beach is too distant for out-patient care for most Broward veterans, and

Whereas, Broward County has the second largest population of any county in the State of Florida and the number of veterans in Broward County exceeds 100,000 and is growing rapidly.

Now, therefore, be it resolved that the Governor and Cabinet:

1. Recognize a present need for a veterans' out-patient medical facility in Broward County.

2. Urge the Veterans Administration to establish such a facility in a readily accessible location in Broward County, giving consideration to population density and geographical factors and with the site selected in cooperation with the Florida Division of Veteran Affairs.

3. Direct that a copy of this resolution be forwarded to Senator Lawton M. Chiles and Senator Richard Stone, Congressmen Paul G. Rogers, J. Herbert Burke and William Lehman, and Congressman Ray Roberts, Chairman, Committee on Veterans Affairs.

Mr. CHILES. Mr. President, it is my pleasure to join with my colleague Senator STONE in sponsoring legislation for the establishment of a Veterans' Administration outpatient clinic in Broward County, Fla. Broward County, located on the southeast coast of Florida is one of the fastest growing areas in the State and in the Eastern United States. Included in this tremendous growth has been a sizable influx of veterans. Younger veterans have been attracted for business and occupational opportunities while retired veterans have chosen this area because of the climate and the many recreational opportunities. The veterans population in this county presently numbers well over 100,000.

Along with any rapid growth in the veteran population of a given area comes a responsibility to provide for their medical needs. While VA medical facilities exist in Dade County to the south and Palm Beach County to the north, it is often difficult for Broward County veterans and their dependents to utilize these facilities. Travel to the VA hospital in Miami or the outpatient clinic in Palm Beach County is difficult due to limited transportation facilities and once the veteran arrives at his or her destination, long waits often result. I have always felt we owe a tremendous debt of gratitude to the veterans of our country and the establishment of an outpatient clinic in Broward County would go a long way toward meeting the medical needs of the over 100,000 veterans now residing in this area.

By Mr. MATHIAS:

S. 2179. A bill to permit pharmacists to use generic drugs in the filling or refilling of prescriptions made by physicians; to the Committee on Human Resources.

Mr MATHIAS. Mr. President, the bill I have sent to the desk, the generic drug dispensing bill, is designed to eliminate excessive advertising, marketing, and promotion of brand name drugs.

The pharmaceutical industry spends an estimated $1 billion a year to promote brand names of prescription medicines. Those brands are commonly priced much higher than the same drugs marketed under generic names. Such intensive promotion is aimed at influencing physicians to prescribe brand names of drugs, even though the generic equivalents are as effective.

The cost of medicines is a substantial part of the cost of health care, especially among aged citizens and others who require prolonged medication. Disadvantaged Americans, such as the near-poor, the elderly, and the chronically ill will gain the most by the bill I am introducing, but all Americans will benefit. My bill will save the Nation's ill as much as $2 billion a year on prescription medicines.

Senior citizens comprise only 11 percent of the population but buy 25 percent of all prescription drugs. Elderly Americans spend up to 45 percent of their limited incomes for prescription drugs. These citizens must sometimes choose between medicine and food when money runs low.

My bill:

Requires pharmacists to fill or refill prescriptions with the least costly preparation of the prescribed drug in his inventory;

Allows the physician to direct the pharmacist to fill or refill the prescription only with the drug identified in the prescription;

Allows physicians to direct the pharmacist to fill or refill the prescription with a specific formulation of the prescribed drug; and

Allows patients to request the pharmacist to fill or refill the prescription with a drug other than the least-cost drug, except for those patients for whom medicare pays benefits for the prescription.

Mr. President, 32 of the 50 States in the Union have enacted drug substitution laws. It is time the U.S. Senate showed its concern for citizens who must purchase prescription drugs.

Mr. President, I ask unanimous consent that the text of the generic drug dispensing bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2179

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Generic Drug Dispensing Act".

FINDINGS

SEC. 2. The Congress hereby finds that—

(1) the cost of drugs is a substantial part of the cost of health care especially among aged citizens and other citizens who require maintenance doses for prolonged periods;

(2) drug costs are commonly not prepaid through health insurance;

(3) drug costs may preclude patients from receiving the health restoring benefits of the medical and pharmaceutical sciences or defer or prevent the attainment of other economic priorities; and

(4) physicians are subjected to intensive promotions of the proprietary formulations of drugs which are commonly priced much higher than the same drug marketed under the generic name and therefore may prescribe a drug by proprietary name when, in fact, they are concerned solely with the active ingredients and not with the proprietary formulation.

SEC. 3. (a)(1) Except as provided in paragraph (2), if a drug to be dispensed pursuant to a prescription of a physician, licensed by law to administer the drug, and such drug is identified in the prescription by a proprietary name or designation, any pharmacist shall fill or refill the prescription with a generic drug if—

(A) the physician does not specify in the prescription (in the case of a written prescription) or in transmitting the prescription to the pharmacist (in the case of a prescription ordered orally) that such prescription is to be filled or refilled only with the drug so identified; and

(B) the cost of the substitute drug to the patient for whom the prescription is made is less than the cost to such patient of—

(i) the drug so identified; and

(ii) any other generic drug in the inventory of the pharmacist at the time such pharmacist fills or refills the prescription involved.

(2) A pharmacist may not select a generic drug to be used to fill or refill a prescription under paragraph (1) if the patient for whom the prescription is made requests such pharmacist to fill or refill such prescription with an available drug other than the generic drug selected by such pharmacist.

(b)(1) Except as provided in paragraph (2), if a drug to be dispensed pursuant to a prescription of a physician, licensed by law to administer the drug, and such drug is identified in the prescription by its generic name, any pharmacist who fills or refills the prescription shall fill or refill the pre-

scription with the generic drug whose cost to the patient for whom the prescription is made is less than the cost to such patient of any other drug in the inventory of the pharmacist at the time such pharmacist fills or refills the prescription involved.

(2) The provisions of paragraph (1) shall not apply if—

(A) the physician involved specifies in the prescription involved (in the case of a written prescription) or in transmitting the prescription to the pharmacist involved (in the case of a prescription ordered orally) that the prescription is to be filled or refilled with a specific formulation which would be required under paragraph (1), except that, in any case in which more than one formulation of the drug conforms to the specification made by the physician, the pharmacist shall fill or refill a prescription with such formulation—

(i) which conforms to such specifications; and

(ii) whose cost, to the patient for whom the prescription is made, is less than the cost to such patient of any other formulation of the drug which would conform to such specification and which is in the inventory of the pharmacist at the time such pharmacist fills or refills the prescription involved; or

(B) the patient for whom the prescription is made requests the pharmacist to fill or refill such prescription with a drug other than the generic drug which would be required under paragraph (1).

(c) Any substitute drug used to fill or refill a prescription under subsection (a) or (b) shall be in the same quantity and dosage form as prescribed in such prescription.

(d) For the purposes of this section, a drug is a generic drug identified in a prescription (either by a proprietary name or designation or by the established name of such drug, if any) if such drug has the same established name as the drug so identified.

EXEMPT TRANSACTIONS

SEC. 4. In the case of any individual participating in the insurance program under part B of title XVIII of the Social Security Act, the filling or refilling of any prescription for such individual, with respect to which benefits are payable under part B of title XVIII of the Social Security Act, shall not be subject to the provisions of sections 3(a)(2) or (3)(b)(2) of this Act.

EFFECT ON STATE LAW

SEC 5. No State or political subdivision of a State may establish or enforce any law or practice which prohibits a pharmacist from taking any action authorized by section 3(a)(1), or any action required by section 3(b)(1) in connection with the filling or refilling of a prescription for a drug by a physician licensed by law to administer such drug.

ENFORCEMENT

SEC. 6. (a) Any violation of any provision of this Act (or any regulation promulgated hereunder), shall constitute a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) and shall be subject to enforcement under the Federal Trade Commission Act.

(b) Nothing contained in this Act shall be construed—

(1) to prevent or interfere with the enforcement of the provisions of any antitrust act or any act to regulate commerce; or

(2) to alter, modify, or repeal any antitrust act or any act to regulate commerce.

DEFINITIONS

SEC. 7. For the purposes of this Act—

(1) the term "act to regulate commerce" has the meaning given it by section 4 of the Federal Trade Commission Act (15 U.S.C. 44);

(2) the term "antitrust act" has the meaning given it by section 4 of the Federal Trade Commission Act (15 U.S.C. 44);

(3) the term "drug" has the meaning given it by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (g)(1));

(4) the term "established name" has the meaning given it by section 502(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(2)); and

(5) the term "State" means any State or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

EFFECTIVE DATES

SEC. 8. (a) Except as provided in subsection (b), the provisions of this Act shall take effect 6 months after the date of enactment of this Act.

(b) The authority of the Federal Trade Commission to prescribe regulations to carry out the provisions of this Act shall take effect on the date of enactment of this Act.

ADDITIONAL COSPONSORS

S. 961

At the request of Mr. CRANSTON, the Senator from New York (Mr. JAVITS) and the Senator from Iowa (Mr. CLARK) were added as cosponsors of S. 961, to promote the healthy development of children who would benefit from adoption by facilitating their placement in adoptive homes, and for other purposes.

S. 1245

At the request of Mr. GRIFFIN, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 1245, the Corrections Construction and Program Development Act of 1977.

S. 1503

At the request of Mr. THURMOND, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1503, relating to the ban on the use of Tris.

S. 1571

At the request of Senator MCINTYRE, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of S. 1571, a bill to incorporate the National Ski Patrol System.

S. 1587

At the request of Mr. STONE, the Senator from North Carolina (Mr. MORGAN) and the Senator from Washington (Mr. JACKSON) were added as cosponsors of S. 1587, a bill to amend the Internal Revenue Code of 1954 to exempt certain State and local government retirement systems from taxation, and for other purposes.

S. 1726

At the request of Mr. BYRD, on behalf of Mr. HUMPHREY, the Senator from Colorado, Mr. HASKELL, was added as a cosponsor of S. 1726, a bill to amend the Small Business Act to declare a national small business economic policy, to provide for an ongoing program of advocacy and economic research and analysis for small business, and to increase the exchange of pertinent information and the level of cooperation between the Small Business Administration and other departments, agencies, and instrumentalities of the Federal Government.

S. 1928

At the request of Mr. CRANSTON, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 1928, to amend the Social Security Act to strengthen and improve the program of Federal support for foster care of dependent children, to establish a program of Federal support to encourage adoptions of children with special needs, and for other purposes.

S. 1974

At the request of Mr. CULVER, the Senator from Mississippi (Mr. EASTLAND) was added as a cosponsor of S. 1974, the Regulatory Flexibility Act.

S. 2014

At the request of Mr. RIEGLE, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2014, a bill to amend the Bankruptcy Act to provide a priority for certain debts to consumers.

S. 2096

At the request of Mr. CRANSTON, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of S. 2096, the Financial Privacy Act.

SENATE RESOLUTION 242

At the request of Mr. HATCH, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Resolution 242, relating to the Internal Revenue Service policy toward fringe benefits.

SENATE CONCURRENT RESOLUTION 37

At the request of Mr. BARTLETT, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Concurrent Resolution 37, disapproving Federal motor vehicle safety standard on occupant restraint system.

AMENDMENT NO. 849

At the request of Mr. CULVER, the Senator from Mississippi (Mr. EASTLAND) was added as a cosponsor of amendment No. 849, to be proposed to S. 1974, the Regulatory Flexibility Act.

AMENDMENTS NOS. 1010 AND 1020

At the request of Mr. TOWER, the Senator from Arizona (Mr. GOLDWATER) and the Senator from Kansas (Mr. DOLE) were added as cosponsors of amendments Nos. 1010 and 1020, to be proposed to S. 1871, the minimum wage bill.

AMENDMENT NO. 1018

At the request of Mr. WILLIAMS, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of amendment No. 1018, to be proposed to S. 1871, to amend the Fair Labor Standards Act.

SENATE RESOLUTION 285—SUBMISSION OF A RESOLUTION AUTHORIZING THE PRINTING OF A REPORT

(Referred to the Committee on Rules and Administration.)

Mr. RANDOLPH submitted the following resolution:

S. RES. 285

Resolved, That the annual report of the Administrator of the Environmental Protection Agency to the Congress of the United States (in compliance with sections 313, 202, and 306(e) of Public Law 91-604, The Clean Air Act as amended) entitled, "Progress in the Prevention and Control of Air Pollution in 1976" be printed, with illustrations, as a Senate Document.

Sec. 2. There shall be printed one thousand additional copies of such document for the use of the Committee on Environment and Public Works.

SENATE RESOLUTION 286—ORIGINAL RESOLUTION REPORTED RELATING TO THE CONSIDERATION OF S. 897

(Referred to the Committee on the Budget.)

Mr. SPARKMAN, from the Committee on Foreign Relations, reported the following original resolution:

S. RES. 286

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 897. Such waiver is necessary because hearings were delayed in order to accommodate the Administration in formulating its position on nuclear nonproliferation and to await its substantive testimony which did not occur until May 6, 1977. Furthermore, the Administration bill, S. 1432, was not introduced until April 29, 1977, and three committees were given jurisdiction over it. The number of hearings which were required in order to receive input from all necessary groups of witnesses made the May 15 deadline impossible to meet.

The effect of defeating consideration of the authorization will be to substantially reduce the program of cooperation and assistance to developing countries for the purpose of developing indigenous energy resources. In particular, a program to promote exchange of United States scientists, technicians, and energy experts with those of developing countries will have to be deferred.

The desired authorization will not delay the appropriations process and can be easily accommodated in a supplemental appropriation.

An authorization of this kind was contemplated in the congressional budget. There is a $5 million authorization for "international cooperation" in the Fiscal Year 1978 ERDA Authorization Bill. The present authorization raises this amount to $10 million.

This authorization is sufficiently small that it will not significantly affect the congressional budget. However, its impact in terms of nuclear proliferation will be considerable in relations to its size, it is therefore considered an important part of the Nuclear Nonproliferation Act of 1977.

AMENDMENTS SUBMITTED FOR PRINTING

INCREASE IN MINIMUM WAGE—S. 1871

AMENDMENT NO. 1417

(Ordered to be printed and to lie on the table.)

Mr. THURMOND submitted an amendment intended to be proposed by him to the bill (S. 1871) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that act, to provide for an automatic adjustment in such wage rate, and to adjust the credit against the minimum wage which is based on tips received by tipped employees.

AMENDMENT NO. 1418

(Ordered to be printed and to lie on the table.)

Mr. NELSON submitted an amendment intended to be proposed by him to the bill (S. 1871), supra.

AMENDMENT NO. 1420

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT submitted an amendment intended to be proposed by him to the bill (S. 1871), supra.

ADMISSION OF CERTAIN INDOCHINESE REFUGEES—H.R. 7769

AMENDMENT NO. 1419

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for himself, Mr. HUMPHREY, Mr. CRANSTON, Mr. HAYAKAWA, Mr. JOHNSTON, Mr. MOYNIHAN, Mr. PELL, Mr. INOUYE, Mr. MATSUNAGA, and Mr. BUMPERS) submitted an amendment intended to be proposed to the bill (H.R. 7769) to authorize the creation of a record of admission for permanent residence in the cases of certain refugees from Vietnam, Laos, or Cambodia.

PUBLIC UTILITY REGULATORY POLICY—S. 2114

AMENDMENT NO. 1422

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself and Mr. DURKIN) submitted an amendment intended to be proposed to the bill (S. 2114) to authorize Federal action to encourage energy conservation, efficiency, and equitable rates in public utility systems, and for other purposes.

AMENDMENT NO. 1423

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill (S. 2114), supra.

AMENDMENT NO. 1424

(Ordered to be printed and to lie on the table.)

Mr. HUDDLESTON (for himself and Mr. FORD) submitted an amendment intended to be proposed to the bill (S. 2114), supra.

AMENDMENT NO. 1425

(Ordered to be printed and to lie on the table.)

Mr. SASSER (for himself, Mr. METCALF, Mr. NELSON, Mr. ZORINSKY, Mr. EAGLETON, Mr. KENNEDY, and Mr. ANDERSON) submitted an amendment intended to be proposed by them, jointly, to the bill (S. 2114), supra.

Mr. SASSER. Mr. President, on behalf of myself and others, I submit an amendment to S. 2114, the utilities rate bill. This amendment deals with interconnection and wheeling.

I ask unanimous consent that a fact sheet on this amendment be printed in the RECORD.

There being no objection, the fact sheet was ordered to be printed in the RECORD, as follows:

FACT SHEET ON INTERCONNECTION AND WHEELING

1. What is interconnection?

Interconnection is where two utilities are hooked up so as to allow a transmittal of power between them. Interconnection under this amendment refers only to "bulk", or wholesale, power transfers.

2. What is wheeling?

Wheeling is where one system is paid for the use of its underutilized transmission lines to effect a transfer of electrical energy between others. The utility located in the middle of the diagram below is wheeling power.

UTILITY A—UTILITY B—UTILITY C

3. What are the benefits of wheeling and interconnection?

(a) Increased reliability of service.

(b) Achievement of economies of scale.

(c) Reduction in the need for reserve capacity.

(d) Reduction in capital investment requirements.

(e) Reduction in the rate base, and reduction in consumer utility bills.

(f) Competition in bulk power sales.

(g) Enhanced environmental protection.

(h) Less risk of blackouts and brownouts.

4. What about the environment?

Power lines crossing the countryside leave scars upon the landscape. Wheeling allows the maximum use of these transmission lines. Transmission lines require some ten to twenty acres of easements and condemnations per mile of line, and they often invade farmlands and pristine public lands. In North Dakota today, new 365 kv transmission lines require a capital investment of $175,000 per mile. This figure is in the lower range of capital costs because of relatively favorable terrain conditions in that State. Wheeling permits more efficient use of existing facilities.

5. What about energy savings?

While there is a dearth of information on national figures, regional examples show the energy savings available from interconnection and wheeling.

The Senate Subcommittee on Energy Regulation took testimony at hearings held in September, 1977 which revealed that if the Texas utility pool, ERCOT, was interconnected with Louisiana and with the five States which make up the Southwest Power Pool, the savings between 1975 and 1980 would have been between $600 million and $2 billion.

According to the Bonneville Power Administration, a contracted transfer of hydroelectric power from the Pacific Northwest to the Pacific Southwest results in an annual savings of 15 million barrels of oil. At today's prices, this amounts to about $216 million in OPEC oil.

6. Why should the Federal Energy Regulatory Commission (FERC) be able to order wheeling?

Because voluntary wheeling has not been fully effective. Utilities are sometimes reluctant to interconnect and to wheel because making the transportation of electricity more fluid tends to increase competition in the sales of bulk power from one utility to another. Some utilities will argue that wheeling can mean a loss of wholesale customers. The fact is they don't want the competition.

In 1973, the Supreme Court ruled that one such refusal to wheel was a violation of Section 2 of the Sherman Antitrust Act. The case was *Otter Tail Power Company* v. *United States*. It involved a private utility firm's refusal to wheel energy or to sell energy to four municipal electric systems. Writing from the majority of the Court, Justice William O. Douglas described the situation:

"The critical events centered largely in four towns—Elbow Lake, Minnesota, Hankinson, North Dakota, Colman, South Dakota, and Aurora, South Dakota. When Otter Tail's franchise in each of these towns terminated, the citizens voted to establish a municipal distribution system. Otter Tail refused to sell the new systems energy at wholesale and refused to agree to wheel power from other suppliers of wholesale energy."

The Court found that these extreme actions were taken solely to protect the company's monopolistic position. The Court's remedy was to order wheeling of power by Otter Tail to the municipal power systems.

7. What can a utility do now if it is the victim of an unreasonable refusal to wheel or to interconnect?

The Federal Power Commission cannot order wheeling, except in emergencies. It can order interconnections in certain circumstances. To rectify a refusal to wheel, a utility would have to initiate an antitrust suit under the provisions of the Sherman Anti-

trust Act, which is an expensive and lengthy process.

This is impractical for small municipal electric systems and rural electric cooperativs with limited resources. In the *Otter Tail* case, one of the four towns, Hankinson, N.D., reluctantly decided to renew Otter Tail's contract after Otter Tail refused to wheel.

Granting the Federal Energy Regulatory Commission the authority to order wheeling in such cases would at least provide an incentive for good faith bargaining between the parties involved.

8. Will the wheeling and interconnection amendment adequately protect utility companies which may be ordered to wheel?

Yes. Utilities already are assured a fair and reasonable return on their investment by virtue of several Supreme Court rulings dating back to 1898. These include: *Smyth* v. *Ames* (169 U.S. 466), *Wilcox* v. *Consolidated Gas Co.* (212 U.S. 19), *Bluefield Water Works* v. *West Virginia Public Service Commission* (262 U.S. 679), and *Federal Power Commission* v. *Hope Natural Gas* (320 U.S. 591).

Further, under the Sasser wheeling and interconnection amendment, the following rigorous requirements would have to be met before the Federal Energy Regulatory Commission could issue a wheeling or interconnect order:

(1) application by a State utility commission, utility or qualified cogenerator;

(2) public notice and notice to each utility commission, utility, and cogenerator affected;

(3) full hearing and investigation;

(4) demonstration that the utility or qualified cogenerator is ready, willing and able to provide reimbursement reasonably due for the costs (including capital and operating costs) incurred by the utility or owner which is required to interconnect or to wheel; and

(5) allowance of sufficient time for regotiation between the parties involved.

Finally, the Commission would have no authority to order any of the actions provided for in the amendment which would result in either (1) the enlargement of generating facilities owned by the utility subject to such order, or (2) result in any undue burden on that utility, significantly impair the reliability of the system of that utility, or impair its ability to render adequate service to its customers.

9. What is the Administration position?

President Carter has proposed wheeling and interconnection authority for the Federal Energy Regulatory Commission. Wheeling and interconnection powers are included in S. 1469, the President's original energy bill. The April 29 National Energy Plan states:

"Utility interconnections and power pools make possible economies of scale, reduction in aggregate capacity requirements, and sharing of power during emergencies. Expansion of interconnections and achievement of maximum efficiency from pools are primarily the responsibility of the utility sector, which has been active in this area.

"The Federal Government will follow closely the further progress of the utility sector. A proposed amendment to the Federal Power Act *would remove a major gap in the authority of the Federal Power Commission by authorizing it to require interconnections* between utilities even if they are not presently under FPC jursdiction. *The FPC would also be authorized to require wheeling the transmission of power between two noncontiguous utilities across another utility's system.*" (Emphasis added.)

10. What precedents are there for the Senate to take this action?

Besides the Supreme Court's landmark decision in the case of the Otter Tail Power Company's refusal to wheel, there are other precedents:

(1) The House has already adopted the essence of the President's proposal on interconnection and wheeling, which goes considerably further than the Sasser amendment in granting ordering powers to the Federal Government.

(2) In 1976 the Senate Commerce Committee approved a measure on interconnections and wheeling S. 3311 very similar to the Sasser amendment. The bill was not considered by the Full Senate due to the press of other business at the end of the 94th Congress.

(3) Also during the 94th Congress, the Senate voted by a 47–23 margin to require wheeling of federal power by any utility which received a right of way for a transmission line over federal land.

(4) The Interior Department routinely requires companies which use government easements to construct their power transmission lines to wheel electricity over those lines.

(5) Since 1970, the Nuclear Regulatory Commission has 27 signed interconnection and wheeling orders and consent decrees under a pre-licensing antitrust review law. This law, passed by Congress in 1970, requires that the government as a prerequisite to the issuance of nuclear power plant permits be satisfied that utilities requesting such permits do not engage in anticompetitive practices. This policy reflects the same principle embodied in the Sasser wheeling and interconnection amendment.

MILITARY PROCUREMENT AUTHORIZATIONS—S. 1863

AMENDMENT NO. 1421

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for himself and Mr. MATHIAS) submitted an amendment intended to be proposed to the bill (S. 1863) to authorize appropriations during the fiscal year 1978 for procurement of aircraft and missiles, and research, development, test, and evaluation for the Armed Forces, and for other purposes.

NOTICES OF HEARINGS

SUBCOMMITTEE ON LABOR, COMMITTEE ON HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, I wish to announce that the Subcommittee on Labor will hold 3 days of oversight hearings on the Employee Retirement Income Security Act of 1974 (ERISA). The dates of the hearings are Tuesday, October 11, Thursday, October 13, and Friday, October 14, 1977, in room 4232, Dirksen Senate Office Building, beginning on each day at 9:30 a.m. The hearings will include consideration of S. 2125—a bill to permit the Pension Benefit Guaranty Corporation to postpone mandatory termination insurance coverage for multiemployer plans for up to 18 months. Other matters to be considered by the subcommittee will include a proposal by the Pension Benefit Guaranty Corporation to raise premium rates for single employer plans, and certain administrative and substantive ERISA implementation issues, including dual jurisdiction, application of the Federal securities laws to ERISA-covered employee benefit plans, the effects of the prudent man rule on investment policy, the special problems of multiemployer plans and small employer plans, preemption of State law, and ERISA improvements. Further information may be obtained by contacting Steven J. Sacher, special counsel to the committee, (202) 224–1097.

POSTPONEMENT

Mr. CRANSTON. Mr. President, for the information of Senators, the Committee on Veterans' Affairs hearing originally scheduled for Thursday, October 6, has been postponed due to an unavoidable scheduling conflict.

The hearing has been rescheduled for Monday, October 17, at 10 a.m., in an as yet undetermined room and will be the second day of testimony on the National Academy of Sciences report, "Health Care for American Veterans" and the Veterans' Administration's response to that report. Witnesses will include representatives from the National Academy of Sciences, the General Accounting Office, the Association of American Medical Colleges, the National Association of VA Physicians, and the Veterans of World War I.

ADDITIONAL STATEMENTS

MIDDLE EAST PEACE SETTLEMENT

Mr. PACKWOOD. Mr. President, on Saturday, the United States and the Soviet Union issued a joint declaration outlining broad objectives for an Arab-Israeli peace settlement. Unfortunately, this latest attempt by the Carter administration to pull a diplomatic rabbit out of the hat may do much more harm than good to the prospects of bringing about a lasting peace in the Middle-East.

I am particularly concerned by the administration's blatant disregard for previous agreements between the United States and Israel. In September 1975, U.S. Secretary of State Kissinger and Israeli Foreign Minister Allon signed the United States-Israeli Memorandum of Agreement in which the United States pledged to "continue to adhere to its present policy with respect to the Palestine Liberation Organization, whereby it will not recognize or negotiate with the Palestine Liberation Organization so long as the Palestine Liberation Organization does not recognize Israel's right to exist and does not accept Security Council Resolutions 242 and 338. The United States Government will consult fully and seek to concert its positions and strategy at the Geneva Peace Conference on this issue with the Government of Israel. Similarly, the United States will consult fully and seek to concert its position and strategy with Israel with regard to the participation of any other additional states. It is understood that the participation at a subsequent phase of the conference of any possible additional state, group or organization will require the agreement of all the initial participants."

Numerous statements in the latest proposal abrogate the spirit of that 1975 agreement. Of critical importance is the failure of the United States to consult closely on the issue of Palestinian "rights" with the Israel Government prior to its release of the document. According to press accounts, Israel was handed the text of the Soviet-American communique only 24 hours in advance and was asked only for comment. Only the most naive would call such actions by the United States in "concert" with the government of Israel.

The text of the Soviet-American statement also fails to reassert some of the

most basic understandings between the United States and Israel. There is no mention of U.N. Resolutions 242 and 338, long considered by all legitimate parties to be the formula for a lasting peace in the Middle East. This serious omission is further compounded by the failure of the communique to speak forthrightly of the necessity of a peace treaty between the parties, a basic prerequisite according to United States-Israel understandings. Instead, the agreement talks in vague terms of "the establishment of normal peaceful relations" between the parties.

I am also concerned, Mr. President, about what I believe to be a shift in the U.S. position toward the recognition of the Palestine Liberation Organization. Although the communique does not mention the PLO, neither does it affirm the traditional American policy that the PLO will not be recognized until it recognizes publicly Israel's right to exist and accepts Security Council Resolutions 242 and 338. Unfortunately, it is becoming commonplace for the administration to sidestep this most important issue by turning a phrase or retreating into ambiguity. Such a policy can only create misconceptions for Arab and Israeli alike and provide hope to a terrorist organization that its existence may soon be legitimized by actions of the United States.

Finally, Mr. President, I am concerned by the new foothold the Soviet Union has gained in the Middle East through the issuance of this joint statement with the United States. For years the Soviet Union has attempted to gain influence in the Middle East by supporting the most militant Arab groups. Only recently, Foreign Minister Gromyko met in Moscow with Yassir Arafat, head of the PLO. This policy has brought the Soviets mixed results.

Now, the United States welcomes a Soviet presence into this most volatile area with open arms. When he was Secretary of State, Henry Kissinger worked patiently and methodically to diminish the influence of the Soviet Union in the Middle East. His policy succeeded. Now, with one stroke, we undercut America's principal ally and the only democracy in the Middle East, we welcome back the Russian bear, and we even confound those Arab governments who had chosen to cease reliance upon Russian support. And what has the United States gained for this? Nothing. What has the Middle East gained? Nothing. What has Israel gained? Nothing.

Mr. President, I firmly believe that what is now needed is an American policy based not on ambiguity but one that insists on face-to-face negotiations between the legitimate states in the Middle East. Ambiguity in American policy only encourages the Arab belief that our Nation will acquiesce in the isolation of Israel and will pressure Israel into a precipitous retreat. Such an action is a formula for war, not peace.

PROGRESS IN SOLID WASTE MANAGEMENT IS REVIEWED—URGE MORE MONEY BE APPROPRIATED FOR NEW FEDERAL PROGRAM

Mr. RANDOLPH. Mr. President, recently, I called attention in remarks in the Senate to the progress being made in the drive for better solid waste management and resource recovery.

In that statement I stressed the important contribution being made to that effort by private industry, labor and business working in close cooperation with each other and with Government in a common cause. I can now add another chapter—and another element—to that report. It concerns the way individual citizens are becoming a part of that effort and how much their involvement can mean to its present and future success. That was attested to in the program and the kind of participation by a Clean Community System Seminar which I had the honor of addressing here on September 28.

The CCS concept was fostered by Keep America Beautiful as a means of ridding cities of trash and garbage. It has already spread across much of the country and even into some overseas areas.

Among those leaders with whom I shared the seminar luncheon were David Lewis, director-general of the Keep Britain Tidy Group, Brighton, England; and David Jackson, executive director of Keep South Africa Beautiful, Johannesburg. Other active participants were Robert Hobson, Charlotte, N.C., public works director; Lewis E. Reid, chief of environmental affairs, Bureau of Outdoor Recreation and chairman of the Steering Committee of the Keep America Beautiful National Advisory Council; Time Magazine Publisher Ralph Davidson; Mayor Buckner F. Melton of Macon, Ga.; and Mayor David Vann of Birmingham, Ala.

More than 340 persons representing a cross-section of business and labor, State and Federal agencies, congressional offices, solid waste specialists and environmental interest groups, were present. A seven-member delegation from Shizuoka-shi, Japan, gave further evidence of international interest in the theme of the event.

I was impressed by this program and by the promise it holds for future progress in the solid waste management field. To share information about the program with the Senate, I ask unanimous consent that sections of my remarks to the seminar luncheon be printed in the RECORD. I also include my letter to Chairman PROXMIRE of the HUD-Independent Agencies Appropriations Subcommittee asking that additional money be provided in the supplemental appropriations bill to more adequately fund solid waste management and resource recovery activities.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COOPERATIVE EFFORT BUILDS A BEAUTIFUL AMERICA

I have faith in the ability and capacity of the American people to come to grips with their problems and to find ways of resolving them. Federal, State and local governments have a responsibility, of course, in providing guidance, leadership and assistance to the private sector in those instances where a major effort is required. But that alone is not enough.

The will, the enthusiasm, the cooperation and the active involvement of individual citizens in partnership with business, labor and industry are essential elements of the formula for success of such efforts. There is persuasive and even dramatic evidence of that fact in what is being done here.

It is evident that this seminar has a twofold purpose. It is intended to spotlight and underscore the true dimensions of a national dilemma—that of finding ways to rid ourselves of the trash, garbage and other solid wastes that have too often and in too many places blighted the face of America. For those of you not already familiar with the details, it is also intended as a graphic illustration of what a dedicated and informed business-citizen coalition can do in one very important aspect.

Credit for fashioning that coalition goes first to the Keep America Beautiful organization which conceived the Clean Community System on which today's seminar is focusing. The degree of the program's success is also a tribute to leaders like KAB President Roger W. Powers; Time Magazine Publisher and KAB Chairman Ralph Davidson; Director Lynn Greenwalt of the Fish and Wildlife Service who serves as Chairman of the National Advisory Council and Mrs. Pillana Desha, President of the National Federation of Business and Professional Women's Clubs and a member of the KAB Board of Directors. We are deeply concerned about the implications of the solid waste problem. I consider it a privilege to participate in today's program with them.

Mayors William Hudnut of Indianapolis and Buckner Melton of Macon typify the vision and dedication of authorities who have contributed so much to making the CCS concept a viable reality. They and their counterparts have been able to make it a "people program" in which garbage is a concern of everyone from the highest city official to the housewife and school child and the desire for a cleaner community becomes a common goal. The extent to which the idea has captured the public imagination is reflected in the almost explosive growth rate of the program. The statistics are impressive. They warrant mention now, even at the risk of possible repetition.

In the planning stage only since 1972 and initiated as a demonstration program in only three cities in 1974, CCS is now in full operation in 74 cities across our country and more than 100 additional communities are preparing for certification. Weirton, West Virginia, is high on that list of future qualifiers.

You will be impressed by the fact that virtually all of the areas where the program is in full effect have achieved very sizable reductions in the volume of litter—many from 25 to 50 percent and up to 70 percent in several instances. That, in itself, is a laudable achievement and, standing alone, would justify the effort.

There is also, however, the potential for other spin-off benefits. In the long run they may be fully as important as the original objective—perhaps even more so. Efforts to cope more effectively with trash and garbage are contributing to a better understanding of the nature and complexity of the solid waste problem as a whole, and of the inherent possibilities of converting it to some degree from a burden to a benefit.

Thanks to the professional guidance, technical information and educational materials being provided to operators of the CCS projects, these already are taking place to a significant degree in the more advanced city programs. The trend is expected to continue and widen in the immediate future.

In some instances, the cities are holding their own workshops on waste management. Operating committees are being called on to give technical advice and assistance to regional authorities and other cities where the program is not yet in operation.

In the process, the citizen and business participants in first phase of the drive for better solid waste management are securing the knowledge and motivation they need to form the nucleus of a strong moving force

in the effort to deal with the bigger and more complex aspects of the dilemma that require resolution.

Additional impetus can also be expected to come in the form of a new program launched only a few days ago by the United States Brewers Association. Called Positive Reduction, the concept calls for utilization of techniques tested in earlier Association campaigns. It is now proposed for use of municipal and county governments throughout the country. The plan is to be promoted through the Association's field staff after a series of five regional meetings which opened last week in Atlanta and will conclude in Boston on October 5.

Persons who have come face to face with the problem know better than others that there are no easy answers or quick solutions, with economic and social factors having to be weighed with environmental considerations in any decision on how to proceed. I am sure you are aware that those decisions must be made and we can ill afford to delay them for long. That necessity has become increasingly evident. Even with the significant progress achieved through CCS, too many areas are struggling with only limited success against excessive accumulation of trash and garbage.

Their efforts have been complicated by the difficulty in finding and maintaining environmentally acceptable sites for sanitary landfills or other disposal procedures. There is growing realization that much valuable materials is being thrown away which could be salvaged for re-use or even converted into a practical new energy source through advances in research and technology. It is conceded that until recently the solid waste problem was something of an environmental stepchild. Even with the passage of the Solid Waste Disposal Act of 1965 and the Resource Recovery Act of 1970, the subject was not adequately addressed because the Congress was preoccupied with development of comprehensive programs to control air and water pollution.

The necessity for more specific action was recognized, however, with enactment last October of the Resource Conservation and Recovery Act which became Public Law 94–580. I had the responsibility for sponsoring that bill which has the essential purpose of giving States a larger role in planning and coordinating local and regional resource recovery programs while providing Federal assistance in carrying them forward.

Within that general concept the measure addresses three major areas of concern. The first is research and demonstration projects relating to environmental problems associated with land disposal, particularly in management of hazardous wastes. The second concerns development of methods to reduce waste volume and to recover and recycle material. Thirdly, the program provides technical and financial help to States and local governments for development of most cost effective and environmentally sound solid waste management practices.

These objectives are consistent with, and a logical extension of, the goals of the Clean Community Systems. I have confidence in American ingenuity and motivation. Those objectives are wholly attainable, given the level of policy commitment and funding necessary to implement the provisions of the legislation.

The support has, unfortunately, not yet been forthcoming to anything like the required level. The Fiscal 1978 budget provided less than $15 million of the approximately $99.5 million which had been requested for first-year implementation.

I have asked the Senate Appropriations Committee to substantially increase this support for the solid waste program through the supplemental appropriations bill which will be developed before the end of this Congressional session. It is essential that adequate financing be provided in the crucial first years of the program. Without that support, a program start will be difficult, if not impossible. The Congress and the Administration should adequately implement the new Act.

It will take that kind of Federal involvement to realize the full potential for waste management and resource recovery. It is also important to understand that much progress has already been achieved through the initiatives of private industry and government agencies at State and local levels.

These gains could not have been achieved if there had not been a public and private partnership willing to explore new ground in the field of solid waste management and resource recovery and ready to invest time and resources. Even with those gains, we have much to do and a long way to go. It will take the combined best efforts of vital segments of our society and individual commitment to overcome what is a problem of staggering proportions. I do not doubt that it can and will be done and that the concept of resource recovery will one day produce rich wards for our economy and our environment.

U.S. SENATE,
Washington, D.C., September 28, 1977.

Hon. WILLIAM PROXMIRE,
Chairman, HUD-Independent Agencies Subcommittee of Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR BILL: In the near future, the Committee on Appropriations will consider supplemental appropriations for fiscal year 1978. The regular fiscal year 1978 appropriations bill for Housing, Urban Development and Independent Agencies (H.R. 7554) recently approved by the Congress, provided only $36.5 million for activities by the Environmental Protection Agency under the Solid Waste Disposal Act.

I ask you to recommend that the supplemental appropriations bill increase the funding for this vital program by $38 million. This is far short of the authorizations contained in the 1976 amendments to the Act (P.L. 94–580), but such an increase is essential if the program provided in the law is to have any chance of realization.

The 1976 Act authorized $30 million in fiscal year 1978 for grants to States and local and regional agencies, for the development and implementation of solid waste management planning. I understand that the Agency's zero-base budgeting exercise indicates an increase in solid waste funding for fiscal year 1979. But a large part of this work must be done, or at least begun, during fiscal year 1978. The $12 million included for this purpose in the regular appropriations bill is not adequate to begin this work, particularly if such limited funds must also be used for the open dump inventory process and for Senate hazardous waste programs, as the Environmental Protection Agency apparently contemplates.

That limited funding level would hinder the development of State solid waste management planning, and allow nothing for support of local and regional solid waste management planning efforts. The 1976 Act contained a strong mandate to develop local and regional responsibilities at the same time as State capacity to deal with solid waste is enhanced. Without adequate funding in fiscal year 1978, this will be impossible. The additional funding for solid waste planning under the section 208 program is not adequate for this purpose.

For these reasons, I ask the Appropriations Committee to provide $30 million, the full authorization, for grants to States and local and regional agencies to support solid waste management planning and programs. In addition, I believe the Committee should increase the authorization for general program activities by $10 million to allow for the costs of the open dump inventory. This was supposed to be a Federal responsibility under the 1976 law; while it is fully appropriate to have it carried out by the States, the funds for the open dump inventory should not be taken out of limited program funds.

A third area for which I ask the Appropriations Committee to consider supplemental appropriations for solid waste activities is for grants to States for hazardous waste program development. The 1976 Act's most ambitious regulatory program is the management of hazardous waste disposal. The Congress strongly intended that program to be operated by the States. If they are not able in fiscal year 1978 to begin development of hazardous waste permit programs, that intention will be frustrated. Future costs to the Federal government may be much higher if it must begin implementation of this program. An appropriation of $10 million (only 40 percent of the authorization) would allow interested States to continue progress toward assumption of the hazardous waste management program.

I realize these recommendations call for substantial supplemental appropriations for solid waste activities over those recently passed. The total appropriation with the recommended supplemental increases, however, represents just slightly over 50 percent of the non-research authorizations for fiscal year 1978. Without this increased funding, the Act's push toward solid waste management and planning at the State and regional level, including hazardous waste disposal control, may be seriously impaired during fiscal year 1978. It may prove impossible to ever regain the necessary momentum.

I would appreciate your help in having these funds included in the fiscal year 1978 supplemental appropriation bill when it is considered by the Committee on Appropriations.

With kind personal regards, I am

Truly,

JENNINGS RANDOLPH,
Chairman.

REMARKS OF HARRY BELL, PRESIDENT, SOUTH CAROLINA FARM BUREAU FEDERATION

Mr. THURMOND. Mr. President, this morning I had the great pleasure of meeting with members of the South Carolina Highway Users Conference. At this meeting, Mr. Harry Bell, president of the South Carolina Farm Bureau Federation, presented the energy policy statement of the conference in a very succinct and eloquent fashion. Such a direct and complete delivery is not unusual for a man of Harry Bell's stature and accomplishments. His tireless efforts on behalf of the farmers of my State have resulted in a very large and comprehensive federation in South Carolina which serves her many agricultural needs. In addition, Mr. Bell was a fitting spokesman for the conference with respect to its views on the many energy problems which face our Nation today.

I ask unanimous consent Mr. President, to have Mr. Bell's presentation printed in its entirety in the RECORD.

There being no objection the presentation was ordered to be printed in the RECORD, as follows:

PRESENTATION BY MR. HARRY BELL

President Carter has said that our country's energy situation is perhaps the biggest challenge of our lifetime. We couldn't agree with him more.

While many people seem to believe the energy problems facing this country are merely problems of the energy producing companies, we do not share this opinion. We believe the energy problems facing this na-

tion are the business of everyone—particularly highway users.

For highway transportation, the question of adequate petroleum supplies is a matter of survival of this industry and—consequently—to the lifestyles to which Americans have grown accustomed. Under present technology, there is no substitute for petroleum energy for highway transportation.

We are vitally concerned with the proposed energy program that has been before Congress for some time and have already corresponded with you on a number of its components.

There are a number of positive steps contained in the President's proposal. They include the belief that energy prices should reflect their true replacement cost; the concern over continuing dependence on foreign oil and its adverse impact on our balance of payments; the rejection of divestiture of the oil companies; the objective of making government energy policies and programs predictable and dependable; the strong emphasis on conservation; and, the spreading of the responsibility for energy problems across the entire economy. However, we have serious reservations about some parts of the proposed plan.

We supported the elimination of the proposed increase in the motor fuel tax to discourage consumption. It would take a huge tax to force conservation and the result would have been inflationary and damaging to the economy.

About two-thirds of all automotive travel is considered essential. Transportation costs are built into the costs of products and services. Right now for example, one-third of the price urban residents, in some areas of the country, pay for their food is in over-the-road transportation. Commerce and our food supply moves, not only by large trucks, but by an extraordinary number and variety of small vehicles. Medical services, utilities, plumbing, television, milk delivery and hundreds of other services move this way and there is no conceivable way they could be replaced by other modes. Increased fuel taxes would drive up the cost of these services to consumers unnecessarily. We do not disagree with the need for highway user taxes to provide needed roads for those who pay for them. But, we commend Congress for rejecting the punitive motor fuel taxes in the energy bill and we will continue this kind of taxation in the future.

Also, we are opposed to the so-called crude oil equalization tax. As you know, this would raise the price of all motor fuel by about seven cents per gallon without doing anything to increase our fuel supply. Highway users would rather see any increase in fuel prices go toward encouraging producers of oil to drill more wells—not for some proposed rebate system. The South Carolina Highway Users Conference has gone on record supporting speedy development of our nation's outer continental shelf for oil and gas production. We oppose any changes in the federal government OCS leasing system that would delay production of offshore petroleum.

We agree with the President that the energy crisis is one of the nation's greatest challenges. However, he has said nothing about relaxing some of the environmental laws which have caused much of this dilemma.

The emissions control equipment on cars is one of the most paradoxical situations which has developed. Paradoxical because, on the one hand, Congress and the Administration is working to solve our energy problems but, at the same time, is in the process of passing laws in the environmental area which greatly increase gasoline consumption. For example, the emissions control equipment on automobiles, in 1974, was estimated to be causing the consumption of an additional 600,000 barrels of oil per day. If all the new cars were 1974 or newer models, they would be contributing only about one-half of one percent of the totals of such chemicals as carbon monoxide and oxide of nitrogen to the atmosphere. Without the federally mandated equipment, automobiles would be producing less than five per cent of the total carbon monoxide and much less than one percent of the oxide of nitrogen. Nature produces 93 percent of the carbon monoxide in the atmosphere and 99 percent of the oxide of nitrogen.

We appreciate the part that the S.C. delegation played in the passage of the New Clean Air Act which freezes the present emission standards for the next two years and we believe any further application of automobile emissions control equipment is unnecessary.

Some of the changes brought about by the environmental movement have been positive—others only complicate our energy problems. We urge Congress to insist on proof positive for the allegations being made by these interests with respect to additional environmental rules and regulations.

There are other recommendations that we would make. First of all, we do not look upon this as an oil shortage or an oil crisis. There is plenty of oil at the present time, if we want to pay the price and rely on uncertain foreign oil imports for nearly half of our needs.

We feel that the United States should make every effort to develop all energy sources, but recognize that oil, gas and coal are the only ones that can possibly make a significant contribution to our needs in the immediate future, or, at least, in the next two decades. Therefore, we have no choice but to concentrate our efforts on hydrocarbons, especially oil and gas, until other sources of energy are able to share the load. But one thing is clear: we must have more production.

An essential part of this approach, would be the return to a free market situation for energy. We favor decontrol of crude oil and gasoline prices and deregulation of natural gas prices. If we decontrol the price of oil and natural gas, we will have higher prices. Although basically unpopular, higher prices would help correct our energy situation in two ways: first, they would, over a long period of time, slow our demand; second, they would spur domestic exploration drilling, which would eventually increase both our production and reserve.

Only about 35 percent of known oil deposits is recoverable using present technology. Higher prices would allow technological advances which, in turn, would contribute to improvements in recovery rate of existing oil reserves.

We must greatly increase the production and use of coal because it represents our most abundant and easily accessible source of domestic energy. Where possible, oil and natural gas users should be using coal. In some industries, conversion to coal will be difficult. For example, 38% of all energy used on the farm is natural gas. Most of this is processed gas for fertilizers, chemicals and plastics. Gasoline accounts for 27% of farm energy uses, diesel fuel 15%, LP gas 9%, distillate 5%, electricity 3% and coal and residual oil 1%. Coal for agricultural use will be limited. But, other industries can covert to coal and enable our vital farming industry to utilize needed oil and natural gas for production of food and fiber. For example, we should not use natural gas to make electricity because the conversion factor represents an energy loss over 30 percent.

Another environmental issue which has caused a waste of fuel is the elimination of lead in gasoline. Again, even though there has been no scientific evidence that this causes any serious health problems, lead has been banned as an additive to gasoline, resulting in far less efficient engines and a subsequent waste of gas. It is becoming increasingly apparent that we must all become reasonable about environmental constraints. We also need to review many questionable governmental regulations and take a more rational approach to the prudent use of nuclear energy. Finally, research must be increased to develop every practical energy source as rapidly as possible. In regard to the so-called "exotic forms of energy," we must also be realistic. Between now and the year 2000, these will only make a miniscule contribution to our overall energy production.

The development of our alternate energy sources is so compelling that we believe it borders on the absurd to restrain any company from entry into this endeavor. Such measures have been proposed for the oil industry. They are known as horizontal divestiture laws. They would prohibit many of the most experienced companies in energy production from developing coal, nuclear, solar, etc. We oppose horizontal divestiture proposals because they would hamper an all-out effort to solve the country's energy problems.

We support all reasonable and effective conservation measures. For instance, ride sharing is one of the most effective means of reducing rush hour energy consumption. Increasing commuter ride sharing by 20 percent would reduce gasoline consumption by as much as 250,000 barrels a day.

Toward this goal we recommend, as an incentive, an investment tax credit for employers against the capital costs of starting and operating vanpooling programs.

Employer-sponsored vanpooling has proven to be a cost-effective way of reducing rush hour automobile use. At the 3M Company—the pioneer in employer-sponsored vanpooling programs—more than a thousand employees now ride to work in 92 vans. Each van takes six or seven cars off the road. The company estimates that in 1976, vanpooling saved two million vehicle miles of travel and 165,000 gallons of gasoline.

Offering an investment tax credit would bring many more employers into vanpooling programs by allowing them to offset administrative costs and pass greater savings on to employee riders.

But transit, in some instances, can cost energy. Rail mass transit as any number of studies show, uses more energy than buses besides being prohibitively expensive. We believe Congress should discourage any further investment in fixed rail systems for mass transit without proof of a cost-effective relationship.

We would be remiss if we did not state the Conference's position on highway safety. The Conference is a strong supporter of federal and state highway safety programs. We believe that the 55 mph speed limit saves lives and fuel and should be strictly enforced.

We hope that our presence here today emphasizes our concern about the energy problems faced by highway users and all Americans.

DANGLING JUSTICE

Mr. GOLDWATER. Mr. President, for too long now, we have witnessed the ever-growing practice in the field of criminal law of "Trial by the media." Unfortunately, the news media have been aided and abetted by the various agencies which have the responsibility to investigate and prosecute any cases of criminal wrongdoing. In their unseeming haste to "right all wrongs," under their newly discovered code of morality, these agencies and their people have beaten a path to the doors of the news reporters with a handful of allegations, innuendoes, and half-truths.

The essence of this new morality is wrapped in the catchall "buzz-words" of "Rights of Americans." What this says is that we will forget the times and tem-

perament and the fact that honorable men were acting on direct orders of their superiors. Instead, we will destroy them all in the name of a new, vaguely defined code of morals and ethics.

The sad result of all of this is that the victims of this peculiar brand of justice have had their names and reputations forever damaged with little or no hope of rehabilitation. On top of this, instead of a quick resolution to the problem, the victims of this charade have been left to "dangle endlessly in the wind." In this regard, a very timely editorial appeared in the October 10 issue of U.S. News & World Report.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DANGLING JUSTICE

(By Marvin Stone)

Appointment of a free-man committee at the Justice Department to investigate whether Bert Lance violated any criminal laws means that the President's close friend has been added to a prize selection of present and former officials who have been hung out on the line to dangle endlessly in the wind.

A prominent example of what we are talking about is the case of Richard Helms, the former CIA Director, who has faced the possibility of indictment for perjury for well over two years now. He admittedly gave a misleading answer to a Senate committee in a public hearing in 1973. Yet two Attorneys General under two Presidents claim they have been unable to reach a decision on whether he should be prosecuted. So Helms is left to dangle.

Another example is former FBI Special Agent John J. Kennedy. He was indicted last April for his alleged use of illegal techniques in the pursuit of members of a terrorist group. More than a year ago, two former top officials of the Bureau said publicly that they ordered such activities. Attorney General Bell has said on several occasions that the possibility of further indictments was under consideration. But months have gone by without a decision. Meanwhile, those who face possible indictment dangle in the wind, and FBI morale sags.

Still another example: The indictment of Tongsun Park in the "Koreagate" case was delayed until Park had returned to Korea, which does not have an extradition treaty with the U.S., after a long stay in England, which does have such a treaty. For months, Justice officials were unable even to interview him, let alone return him to stand trial.

The Lance case fits the pattern—a grievous inability of the Justice Department to do its business in an expeditious manner. For a year, the U.S. Attorney's office in Atlanta had in its files a case involving possible illegal actions by Lance as a Georgia banker. The case gathered dust all that time. It was only when the appointment of Lance to top post in the new Administration seemed imminent that the Department brought itself to make a decision—to close the case. Whether or not the case should have been closed is now being debated.

With the possible exception of the Korean bribery investigation, where facts are still being gathered, each of these cases appears to present a fairly simple, straightforward situation, requiring a decision based on the law and the evidence already in hand.

A question to be asked is whether the Justice Department has become a morass where private reputations and public business simply disappear in the quicksand.

It is important to ask that question now because the Justice Department is fighting vigorously to keep the Government's legal business to itself—to be the lawyers for virtually all the executive branch. It has 3,689 attorneys on its staff, and does not like to see other agencies adding—as they have—their own lawyers by the thousands, and stealing its thunder.

The Department's latest struggle is with the Federal Energy Administration over who should prosecute cases involving several billions of dollars of alleged overcharges for oil in the aftermath of the Arab oil embargo of 1973. Some administrative Ping Pong is going on here, while justice is being delayed and taxpayers' money is being eaten up.

Government-reorganization studies now being made by the Office of Management and Budget show that at present 25 different agencies and departments have won the right to take their own cases to court. The study is seeking to determine whether greater responsibility should be concentrated in the Justice Department for conducting the nation's legal business.

If the Department is to be given such broad responsibility, we have a right to expect it to do a much more efficient and expeditious job than it seems to be doing.

A YOUTH OPPORTUNITY PROPOSAL

Mr. HATCH. Mr. President, shortly the Senate will start debate on minimum wage legislation during the course of which Senator SCHWEIKER and I, as well as others, will advocate the inclusion of a youth opportunity proposal. We view such a proposal as absolutely essential when one considers the mounting evidence establishing the causal effect between a reduction on entry-level job opportunities and raising the wage.

The recent looting which occurred in New York during the blackout has been blamed by many on the high rate of unemployment, particularly among young people and minority groups—where unemployment runs as high as 40 percent. I am positive in my own mind that the sense of despair existing among young people in that circumstance contributed to the shame of that evening. Of equal shame is the unwillingness of the Congress to provide, at least on a test basis, a program by which all youth, not just those students or those few who qualify for public service jobs or training have a chance for a permanent job in the private sector—where meaningful and lasting employment exists.

Increasingly, those who seek to to find entry-level jobs for teenagers have come to oppose any rise in the minimum wage at this time because of the rise in unemployment among the young which seems inevitably to follow all minimum wage hikes. Employer witness after witness who testified on this subject before the Labor Subcommittee recounted their experience with each rise in the minimum resulting in layoffs, with entry-level jobs usually the hardest hit, as well as curtailed hiring of entry-level personnel, and thus fewer job opportunities.

At a time when excessive unemployment concentrated among the young and minority groups is a critical national concern, the potential impact of raising the minimum and a youth opportunity differential should be studied extensively prior to enactment of this bill.

To aid my colleagues in their deliberations I will insert following my remarks the Labor Subcommittee testimony of two black economists who really told it like it is on the burdens assumed by minority youth when the minimum wage is legislatively increased. Prof. Walter Williams and Thomas Sowell are renowned experts in this area and in my view they lay to rest any theory that hiking the wage does not operate to the severe disadvantage of the already disadvantaged. I hope my colleagues will study and heed well their excellent testimony.

I ask unanimous consent that the testimony of Prof. Walter E. Williams and Thomas Sowell on S. 1871 be printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

RESTRICTIONS ON ECONOMIC OPPORTUNITIES FOR YOUTH AND MINORITIES

(Statement by Walter E. Williams, Associate Professor of Economics, Temple University)

Persistently high rates of unemployment in several segments of the United States labor force is one of the most difficult unresolved economic problems of the post World War II era. The segments of the labor force that produce the most seemingly intractable problem are its youth and minority. Youths, particularly minority youths, face high rate of unemployment even when there are relatively prosperous times and when the adult segment of the labor experiences a relatively low rate of unemployment. This evidence shows that governmental efforts to reduce unemployment through vigorous monetary and fiscal policy produces disappointing results for the youth segment of the labor force. Furthermore, there is not much hope that future monetary and fiscal policy will substantially change the situation over what it has been for well over a decade. What is needed are institutional changes which will free markets, and hence employment opportunities, for the relatively disadvantaged worker.

High youth unemployment would not be such a critical problem if youth employment was considered only as a means to supplement family income or earn spending change. The absence or presence of early work experiences have effects which may spell the difference between a successful or unsuccessful future work career. Early work experiences, even in the most menial of tasks, aids the individual in the acquisition of skills and attitudes that will make him a more valuable employee in the future.[1] Early work experiences (1) teach individuals effective job search techniques; (2) teach effective work habits such as promptness, respect for superiors and other work habits; (3) provides self respect and confidence that comes from being financially independent or semi-independent; (4) provide the valuable opportunity to make mistakes at a time when mistakes are not likely to be as costly as they would be when the worker has dependents counting on him for a continuous source of income. The absence of early work experiences not only deny youths the acquisition of these skills, but may also act as distincentives to the continuation of their formal training. Moreover, the absence of job opportunities is likely to contribute to many kinds of anti-social behavior.

High youth unemployment has effects which are undesirable from both an individual and social point of view. Quite naturally, at least two questions arise: (1) Why are youths, particularly minority youths, so disproportionately represented among the unemployed and (2) what should government policy be with respect to the matter? The first question is one of cause and effect. Economic

Footnotes at end of article.

theory can readily approach this kind of question. On the other hand, what government should do about teenage unemployment opens up the potential for unending debate. This is because no theory, including economic theory, can answer questions that are essentially normative. That is, while economic theory can say who bears the burden of what policy, it cannot in any moral sense justify a policy or its distribution of burden and benefits. Therefore, what follows is the analysis of the factors that cause the high rate of youth and minority unemployment.

MINIMUM WAGE LAWS

The Congress of the United States has the power to legislate increases in the minimum wage at which a labor transaction can occur. However, the Congress, and for that matter no one else, can legislate an increase in worker productivity. Moreover, though the Congress can legislate the minimum wage at which a labor transaction can be made, it has not chosen to legislate that the transaction actually be made. To the extent that the minimum wage law raises the pay level to that which may exceed some workers' productivity, employers will make adjustments in their use of labor. Such an adjustment will produce gains for some workers at the expense of other workers. Those workers who retain their jobs and receive a higher wage clearly gain. The most adverse unemployment effects fall upon those workers who are most disadvantaged in terms of marketable skills, who lose their jobs and income. This effect is more clearly seen if we put ourselves in the place of an employer and ask: If a wage of $2.65 per hour must be paid no matter who is hired, who does it pay the firm to hire? Clearly the answer in terms of economic efficiency is to hire the worker whose productivity is the closest to $2.65 per hour.[2] If such workers are available, it clearly does not pay the firm to hire those whose output is, say, $1.50 per hour. Even if the employer were willing to train such a worker, the fact that the worker must be paid more than his output is worth, plus training costs incurred, makes on-the-job-training an unattractive proposition.

The impact of legislated minimum wages can be brought into sharper focus if we ask the distributional question: Who bears the burden of legislated minima? As I said earlier, workers who are most disadvantaged by minimum wage legislation are those that are the most marginal. These are workers who employers perceive as being less productive or more costly to hire in some sense than other workers. In the U.S. labor force there are at least two segments that share the marginal worker characteristic to a greater extent than do other segments of the labor force. The first group consists of youths in general. They are relatively low skilled because of their age, immaturity and lack of experience. The second group are some racial minorities, particularly the youth, who not only share the handicaps of youths in general but are further burdened by unusually poor schooling, racial discrimination and other socio-economic factors leading to lower skill levels. While low skills can explain low wages, low skills cannot explain unemployment absent some kind of market interference. It is no accident that teenagers, particularly minority teenagers, are disproportionately represented among unemployment statistics as shown in Tables 1 and 2.

Table 1 shows that for most of the years with an increase in the minimum wage law there was an associated increase in teenage unemployment relative to adult unemployment. Arthur F. Burns, in a study of the impact of legislated minimum wages, said:

"During the postwar period the ratio of unemployment rate of teenagers to that of male adults was invariably higher during the 6 months following an increase of the minimum wage than it was in the preceding half year. The ratio of female adults to that of male adults has behaved similarly. Of course, the employment of teenagers and women depends on a variety of other factors—certainly on business conditions as well as on minimum wage. I have tried to allow for this in a more refined analysis. It appears whether we consider the unemployment rates of teenagers or that of women, that its primary determinants are, first, the general state of the economy as indicated by the unemployment rate of adult males, second, the ratio of the minimum wage to the average in manufacturing. The influence of the wage ratio turns out to be particularly strong in the case of nonwhite teenagers." [3]

TABLE 1.—COMPARISON OF TEENAGE AND GENERAL UNEMPLOYMENT RATES

Year	Unemployment rates both sexes		Ratio teenage, general
	General	16–19	
	(1)	(2)	(3)
1948	3.8	9.2	2.42
1949	5.9	13.4	2.27
1950	5.3	12.2	[1] 2.30
1951	3.3	8.2	2.48
1952	3.0	8.5	2.83
1953	2.9	7.6	2.62
1954	5.5	12.6	2.29
1955	4.4	11.0	2.50
1956	4.1	11.1	[1] 2.70
1957	4.3	11.6	2.70
1958	6.8	15.9	2.34
1959	5.5	14.6	2.65
1960	5.5	14.7	2.67
1961	6.7	16.8	[1] 2.50
1962	5.5	14.7	2.67
1963	5.7	17.2	[1] 3.02
1964	5.2	16.2	3.12
1965	4.5	14.8	3.28
1966	3.8	12.8	3.37
1967	3.8	12.9	[1] 3.39
1968	3.6	12.7	[1] 3.53
1969	3.5	12.2	3.49
1970	4.9	15.2	3.10
1971	6.9	16.9	2.86
1972	5.6	16.2	2.89
1973	4.9	14.5	[1] 2.96
1974	5.6	16.0	[1] 2.86
1975	8.1	21.9	[1] 2.68
1976	7.8	19.0	[1] 2.66

[1] Year Federal minimum wage was increased.

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Handbook of Labor Statistics 1975—Reference Edition," p. 145.

A number of other studies have evaluated the impact of legislated minimum wages on unemployment. The conclusions of some representative studies are cited here.

David E. Kaun [4] using census data found that statutory wage minimums caused plant closures and the replacement of labor by other productive inputs. Also the most adverse effects of statutory minimums were concentrated among minorities, teenagers and families.

Yale Brozen [5] in two studies discusses the impact of the minimum wage law. First he shows that the rate of teenage unemployment relative to that of the general population rose and the ratio of nonwhite to white teenage unemployment rose following increases in the federal statutory minimum. In another study he concluded that workers adversely affected by the statutory minimum crowded into uncovered areas, such as domestic housework, increasing employment and depressing wages in the uncovered areas.

Kosters and Welch [6] conclude that the minimum wage law has had the effect of reducing job opportunities for teenagers during periods of normal employment growth and making their jobs less secure in short-term changes in the business cycle. They go on to conclude that a disproportionate share of the cyclical vulnerability is borne by nonwhite teenagers and the primary beneficiaries of shifts in employment patterns are white adult males.

Edward Gramlich [7] argues that a 25 percent increase in the minimum wage law lowers the employment of low wage earners by 10 to 15 percent. Furthermore, Gramlich finds a defect of other studies causing them to understate the true effects of the minimum wage law. Gramlich presents evidence that shows that a rise in the minimum causes a shift toward more part-time employment away from full-time employment. This loss in hours worked does not show up in many studies because they do not distinguish between an individual employed full-time and one employed part-time. Thus, the reduction in hours worked may be greater than the fall in employment alone suggests.

Jacob Mincer [8] reports the adverse effects of the minimum wage on youths and minorities:

The net minimum wage effects on labor force participation appear to be negative for most of the groups. The largest negative effects are observed for nonwhite teenagers, followed by nonwhite males (20–24), white males (20–24) white teenagers, and nonwhite males (25–64).

The net employment effects are negative with the exception of nonwhite females (20–0), for whom the positive coefficient is statistically insignificant. The largest disemployment effects are observed for nonwhite teenagers, followed by nonwhite males (20–24), white teenagers, and white males (20–24).

The weight of academic research by economists is that unemployment for some population groups is directly related to statutory wage minima.[9]

MINIMUM WAGE AND NEGRO YOUTH

So far my discussion has focused mainly on youth unemployment in general. Now I want to make some comparisons between black youth unemployment and white youth unemployment. Table 2 shows male black/white unemployment statistics by age groups over the past several decades.

TABLE 2.—COMPARISON OF YOUTH AND GENERAL UNEMPLOYMENT BY RACE

	General	White 16 to 17	Black 16 to 17	Black/white ratio	White 18 to 19	Black 18 to 19	Black/white ratio	White 20 to 24	Black 20 to 24	Black/white ratio
Year:										
1948	3.8	10.2	9.4	0.92	9.4	10.5	1.11	6.4	11.7	1.83
1949	5.9	13.4	15.8	1.18	14.2	17.1	1.20	9.8	15.8	1.61
1950	5.3	13.4	12.1	.90	11.7	17.7	1.51	7.7	12.6	1.64
1951	3.3	9.5	8.7	.92	6.7	9.6	1.43	3.6	6.7	1.86
1952	3.0	10.9	8.0	.73	7.0	10.0	1.43	4.3	7.9	1.84
1953	2.9	8.9	8.3	.93	7.1	8.1	1.14	4.5	8.1	1.80
1954	5.5	14.0	13.4	.96	13.0	14.7	1.13	9.8	16.9	1.72
1955	4.4	12.2	14.8	1.21	10.4	12.9	1.24	7.0	12.4	1.77
1956	4.1	11.2	15.7	1.40	9.7	14.9	1.54	6.1	12.0	1.97
1957	4.3	11.9	16.3	1.37	11.2	20.0	1.79	97.1	12.7	1.79

Footnotes at end of article.

	General	16 to 17	White 16	Black 16 to 17	Black/white ratio	White 18 to 19	Black 18 to 19	Black/white ratio	White 20 to 24	Black 20 to 24	Black/white ratio
1958		6.8	14.9	27.1	1.81	16.5	26.7	1.62	11.7	19.5	1.66
1959		5.5	15.0	22.3	1.48	13.0	27.2	2.09	7.5	16.3	2.17
1960		5.5	14.6	22.7	1.55	13.5	25.1	1.86	8.3	13.1	1.58
1961		6.7	16.5	31.0	1.89	15.1	23.9	1.58	10.0	15.3	1.53
1962		5.5	15.1	21.9	1.45	12.7	21.8	1.72	8.0	14.6	1.83
1963		5.7	17.8	27.0	1.52	14.2	27.4	1.93	7.8	15.5	1.99
1964		5.2	16.1	25.9	1.61	13.4	23.1	1.72	7.4	12.6	1.70
1965		4.5	14.7	27.1	1.84	11.4	20.2	1.77	5.9	9.3	1.58
1966		3.8	12.5	22.5	1.80	8.9	20.5	2.30	4.1	7.9	1.93
1967		3.8	12.7	28.9	2.26	9.0	20.1	2.23	4.2	8.0	1.90
1968		3.6	12.3	26.6	2.16	8.2	19.0	2.31	4.6	8.3	1.80
1969		3.5	12.5	24.7	1.98	7.9	19.0	2.40	4.6	8.4	1.83
1970		4.9	15.7	27.8	1.77	12.0	23.1	1.93	7.8	12.6	1.62
1971		5.9	17.1	33.4	1.95	13.5	26.0	1.93	9.4	16.2	1.72
1972		5.6	16.4	35.1	2.14	12.4	26.2	2.11	8.5	14.7	1.73
1973		4.9	15.1	34.4	2.28	10.0	22.1	2.21	6.5	12.6	1.94
1974		5.6	16.2	39.0	2.41	11.5	26.6	2.31	7.8	15.4	1.97
1975		8.1	19.7	45.2	2.29	14.0	30.1	2.15	11.3	23.5	2.08
1976		7.9	19.7	40.6	2.06	15.5	35.5	2.29	10.9	22.4	2.05

Source: Adapted from Department of Labor, Bureau of Labor Statistics, "Handbook of Labor Statistics 1975—Reference Edition" (Washington, D.C.; U.S. Government Printing Office, 1975), pp. 153-55.

While most people are knowledgeable of the current deteriorated market position of black youngsters relative to white youngsters, not many are aware of black/white youth employment statistics for earlier periods in our history. The most striikng feature of Table 2 is that in 1948 black youth unemployment was roughly the same as white youth unemployment. Only among black youths (20–24) was the unemployment rate significantly higher. *However*, for black youths age 16–17 their unemployment rate was *less* than of white youths—9.4 percent unemployment compared to 10.2 percent of white youths unemployed. Now, and for the last decade, black youths age 16–17 have suffered an unemployment rate considerably more than twice that of white youth. In fact for *every* age group among youths black youth unemployment is more than twice that of white youths. The statistics cited here understate the true nature of the problem by a wide margin. The reason is that they are national statistics and do not reflect the fact that much youth unemployment is concentrated in our major metropolitan areas. Black youth unemployment in some of those areas has been estimated to be as high as 60 percent!

Another part of this dismal picture is the labor force participation rate among black youth compared to white youth. Table 3 shows this comparison. In earlier periods, black labor force participation rates for *all* age groups exceeded that of whites. In fact, historically, black labor force participation has always exceeded that of whites. Until the mid-sixties blacks, as a group including black youth, had a labor force participation rate equal to or greater than whites.[10] For black youths age 16–17 their labor force participation rate is now slightly over one-half that of white youths. Black youths (18–19) the labor force participation rate is now three quarters that of white youths (18–19). Black youths (20-24) now have a labor force participation rate 90 percent of white youths (20–24). Not only are the labor force participation rates of black youth less than white youths but they are falling.

TABLE 3.—MALE CIVILIAN LABOR FORCE PARTICIPATION RATIO BY RACE, AGE

	Black/white males 16 to 17	Black/white males 18 to 19	Black/white males 20 to 24	Black/white males 16 and over
1954	0.99	1.11	1.05	1.00
1955	1.00	1.01	1.05	1.00
$1 per hour:				
1956	.96	1.06	1.01	.99
1957	.95	1.01	1.03	.99
1958	.96	1.03	1.02	1.00
1959	.92	1.02	1.04	1.00
1960	.99	1.03	1.03	1.00
$1.15 per hour:				
1961	.96	1.06	1.02	.99
1962	.93	1.04	1.03	.98
1963	.87	1.02	1.03	.98
1964	.85	1.01	1.04	.99
$1.25 per hour:				
1965	.88	1.01	1.05	.99
1966	.87	.97	1.06	.98
$1.40 per hour:				
1967	.86	.95	1.04	.97
$1.60 per hour:				
1968	.79	.96	1.03	.97
1969	.77	.95	1.02	.96
1970	.71	.92	1.00	.96
1971	.65	.87	.98	.94
1972	.68	.85	.97	.93
1973	.63	.85	.95	.93
$2 per hour: 1974	.65	.85	.95	.92
$2.10 per hour:				
1975	.57	.79	.92	.91
$2.30 per hour:				
1976	.57	.77	.91	.90

Source: Computed from U.S. Department of Labor, Bureau of Labor Statistics, "Handbook of Labor Statistics 1975—Reference Edition" (Washington, D.C.: U.S. Government Printing Office, 1975), pp. 36–37.

Faced with these facts one naturally asks why have labor market opportunities deteriorated so precipitously for black youths relative to white youths? Can racial discrimination explain this kind of reversal? Probably not. It would be very difficult for anyone to sustain an argument which held that business and society have become more racially discriminatory than they were in the past. The answer lies elsewhere as has already been suggested—the minimum wage law.

Earlier I said that economic theory predicts that when a wage is legislated that exceeds worker productivity firms will have inducement to make adjustments in its use of labor. Though not intended this adjustment which firms can rationally be expected to make has racial effects. That is, one type of adjustment is to hire not only *fewer* youths, relative to other inputs, but seek among those youths hired the ones with higher qualifiations. As it turns out for a host of socioeconomic reasons with which we are all familiar, white youths, more often than black youths, have better educational backgrounds. Therefore, as reflected in the unemployment statistics, increases in the minimum wage law can be expected to impose a greater unemployment burden on black youths than on white youths. Observations such as those that I have cited are those which prompted Milton Friedman, our economist Nobel prize winner, to say that the minimum wage law is the most anti-black law on the books.

CURRENT MINIMUM WAGE LAW PROPOSALS

The proposed 1977 amendments to raise the minimum wage and index it to the average wage of production workers in manufacturing will have serious unemployment consequences for youth. The rise in the minimum wage will raise youth unemployment. Gramlich has recently argued that a 25 percent increase in the minimum wage would lower the employment of low wage youth by 10 to 15 percent.[11] This calculation implies that a rise in the minimum wage from $2.30 to $2.85 per hour will decrease low wage youth employment by 9.6 percent to 14.4 percent.

Indexing the minimum wage will reinforce the unemployment effects of the rise in the minimum wage. Inflation has the effect of lowering the effective minimum wage. That is, inflation lowers the *real* wage, i.e., the money wage deflated by the price index. Therefore, if inflation can be said to have any beneficiary effects, it is that inflation erodes the legislated minimum wage and hence mitigates some of its adverse impact on youth. Indexing the minimum wage to the average wage in manufacturing will eliminate this effect and hence exacerbate youth unemployment.

One hope against the predicted large increase in youth unemployment, should the proposed amendment pass, is the inclusion of a significant youth differential. If Congress wants to reduce the expected unemployment effects of the proposed amendment, firms should be permitted to hire youths at rates considerably less than the adult rate.

Should the proposal pass as it is now the likely result is a mixture of the two following outcomes. Taxpayers are going to be called upon to tax themselves to support massive federal programs to provide income for the nation's disadvantaged who will not be employed by the private sector. The more tragic alternative is that millions of youths will become discouraged and permanently drop out of the labor force.

CONCLUSIONS

My testimony at these hearings could include many other federal regulations and laws that make it almost impossible for present disadvantaged minorities to enter the mainstream of American society as have earlier disadvantaged minorities. The point that I wish to make in the strongest fashion possible is that many laws, though well-intentioned, spell disaster for a large segment of black, Hispanic and other disadvantaged minority groups. The most tragic element of this is that society will come to view the difficulty that these groups have in fully entering the mainstream of American society (in spite of the billions of dollars spent, in spite of civil rights legislation, in spite of thousands of civil rights litigation cases) as group incompetence, and as such the most racist elements of society will have their prophecies realized. Hardly anyone acknowledges that many, if not most, of the problems encountered are neither due to group nor individual incompetence but due to the excesses of government influenced by politically powerful interest groups. Many of these groups in the pursuit of their objectives contribute to the enactment of laws which spell disaster for disadvantaged Americans.

FOOTNOTES

[1] Many argue that "deadend" jobs deny the individual career-related skills. However, many of the skills absent among many of our youth and hard-core unemployed can be obtained in any job. Furthermore to assign certain jobs as deadend is unfortunate because it creates false and unrealistic labor market expectations among our youth.

[2] Actually the compensation that employers have to pay is higher to the extent that Social Security and fringe benefits are paid.

[3] Arthur F. Burns, "The Management of Prosperity," (New York: Columbia University press, 1966), pp. 47–48.

[4] David E. Kaun, "Minimum Wages, Factor Substitution, and the Marginal Producer," *Quarterly Journal of Economics* (August, 1965), pp. 478–486.

[5] Yale Brozen, "The Effect of Statutory Minimum Wages on Teenage Unemployment," *Journal of Law and Economics* (April, 1969), pp. 109–122; Yale Brozen, "Minimum Wage Rates and Household Workers," *Journal of Law and Economics* (October, 1962), pp. 103–109.

[6] Marvin Kosters and Finis Welch, "The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment," *American Economic Review* (June, 1972), pp. 323–332.

[7] Edward M. Gramlich, "Impact of Minimum Wages on Other Wages, Employment and Family Income," *Brookings Papers on Economic Activity* (Washington, D.C.: The Brookings Institute, 1976), pp. 409–451.

[8] Jacob Mincer, "Unemployment Effects of Minimum Wages," *Journal of Political Economy* (August, 1976), pp. 87–105.

[9] Other studies showing these effects are: William G. Bowen and T. Aldrich Finegan, *The Economics of Labor Force Participation* (New Jersey: Princeton University Press, 1969); Thomas G. Moore, "The Effect of Minimum Wages on Teenage Unemployment Rates," *Journal of Political Economy* (July/August, 1971), pp. 897–902; Terrance Kelly, "Two Policy Questions Regarding the Minimum Wage," The Urban Institute, February, 1976, mimeo; Robert Golfarb, "The Policy Content of Quantitative Minimum Wage Research," Industrial Relations Research Association Proceedings, December, 1974, pp. 261–268. Many other references can be found in the bibliographies and footnotes of these studies.

[10] In 1910, 71 percent of blacks over 9 years of age were employed compared to 51 percent for whites. See U.S. Bureau of Census, *Negro Population, 1790–1915* (Washington, D.C.: U.S. Printing Office, 1918), pp. 166.

[11] American Enterprise Institute, *Minimum Wage Legislation* (Washington, D.C.: American Enterprise Institute for Policy Research, 1977), p. 15.

Minimum Wage Escalation

(By Thomas Sowell)

The presently proposed minimum wage legislation raises two major sets of issues: (1) the question of the real effects of minimum wages, as such, and (2) the effect of the new principle of automatically escalating minimum wage levels, tied to earnings elsewhere in the economy.

Because of inflation, minimum wage levels have been periodically reviewed, and therefore the general issues and growing evidence on the actual effects of the Fair Labor Standards Act have also been reviewed. What an automatic escalation provision means is that we stop looking at the evidence. And we would stop at a time when a growing body of research by independent economists around the country is documenting the negative effects of the minimum wage law—and particularly its devastating impact on job opportunities for minority teenagers.[1]

Minimum wage laws have been aptly described as "anathema to economists." [2] Even though 88 percent of academic economists supported the "war on poverty," 61 percent of those same economists opposed the minimum wage law.[3] In short, this is not opposition based on philosophy or political leaning, but on economic analysis and on the mounting factual evidence that the law increases unemployment among the very people intended to be benefitted. Moreover, economic research has also revealed a disturbing correlation between teenage unemployment and teenage crime rates.[4] In view of this, this seems like a particularly inappropriate time to stop looking at the evidence by putting in an escalator clause that will give the law a life of its own, independent of its effects on people.

The minimum wage law might be discussed in terms of philosophical, political, or economic theory, but the real issues turn on facts. The crucial factual question is whether eliminating wage rates below some designated level also eliminates jobs. As a realistic matter, few people of any philosophical, political, or economic persuasion would want to see either (a) job-seekers unemployed with a hypothetical right to a "living wage," or (b) people employed at very low wages when they could be equally fully employed at normal wages.

While facts are crucial, they are not easy to get, for a number of reasons which will be discussed. It will also be necessary to consider a number of standard (or stereotyped) arguments about the minimum wage effects which have persisted over the years. Finally, I would like to venture a few suggestions about the continuing need to assess the impact of the law and some ways that assessment might be improved.

I. Factual Studies

There are serious problems inherent in trying to study the unemployment effects of minimum wages, as well as other problems that derive from the way the U.S. Department of Labor chooses to approach the issue.

One problem that plagues minimum wage effects studies is getting statistical data for the specific workers directly affected by the minimum. Such workers are often only a small fraction of the total workforce. Even where a substantial proportion of the directed affected workers lose their jobs as a result of a minimum wage increase, this effect can be lost statistically in the random fluctuations in employment of the much larger number of workers whose wages were always above the minimum. The statistical extraction of the relevant changes is analogous to trying to receive an electronic signal through a heavy background of static noise. Different economists use different methods and devices to mute the background statistical "noise" in order to read the signal. As a result of their different procedures for grappling with this problem, economists' numerical estimates of the unemployment effect of the law differ—a variation seized upon by proponents of minimum wages [5]—but it is increasingly clear that the consensus of these studies is that the law does cause substantial unemployment, and that is more fundamental than the question of exact numbers.

One of the simplest ways of reducing the statistical "noise" in the data is by selecting some age-group which is known to receive very low wages, so that a relatively high percentage of the people in the category chosen are earning low enough wages to be directly affected by minimum wage changes. Teenagers are an obvious choice, and nonwhite teenagers even more so. Here the serious unemployment effect of minimum wage rates has been repeatedly demonstrated by economists operating independently of one another and using different statistical methods.[6]

Extremely high unemployment rates among black teenagers have been so highly publicized in recent years, and so automatically attributed to employer discrimination, that certain historical facts must be noted. Large racial differences in teenage unemployment are of relatively recent vintage. In the late 1940's and early 1950's, there were no such large differences, and indeed, black youngsters 16 and 17 years old had consistently lower unemployment rates than whites in the same age brackets.[7] Surely no one is going to claim that there was less employer discrimination then than now. We all know better. What was the difference, then? Minimum wages had not yet begun the rapid rise and spreading coverage which has been the dominant pattern since then.[8]

The unemployment effect of minimum wages can also be seen in international comparisons of countries that do and do not exempt young people from the adult minimum wage. In countries where such exemptions are slight or nonexistent—such as the United States and Canada—youth unemployment is some multiple of adult unemployment. But where there are exemptions that are large and cover a number of working years—as in England, Germany and the Netherlands [9]—there are no significant differences between youth unemployment rates and adult unemployment rates.[10]

These findings may reflect the special vulnerability of teenagers as an inexperienced and relatively unskilled group—or they may reflect the greater statistical ease of determining the facts for this group. A recent survey of minimum wage studies notes "the lack of acceptable continuing data on low-wage adults." [11] The same things known to be happening to teenagers may also be happening to other very low-wage people, who happen not to be grouped together statistically. There are some scattered clues that this is in fact the case. For example, an older study of domestic servants, before they were covered by the Fair Labor Standards Act, showed that their ranks tended to be increased in the wake of minimum wage increases, suggesting the displacement of low-skill women from other employment that was covered by the Act.[12]

Factual studies by independent (usually academic) economists must be sharply distinguished from studies by the U.S. Department of Labor. The Labor Department itself has recently been forced to acknowledge the gap between its perennially optimistic conclusions and the consensus of independent studies, the latter "using advanced economic and statistical analyses." [13] The crudity of the Labor Department studies has been scathingly criticized by academic economists.[14] However, even so, the actual numbers appearing in Labor Department studies of minimum wage effects often show employment declines in the wake of minimum wage increases, even though the stated conclusions of these very same studies may be that the minimum wage did not cost people their jobs.[15] Congressman Dent is correct only in the narrowest sense when he asserts that "Not once in the history of the minimum wage has there been an adverse report" from the Labor Department about "the lessening of job opportunities." [16] In this context, such a statement is far from reassuring. It will hardly be the first clean bill of health given by an agency evaluating itself or the legislation on which its own appropriations and staff depends. This is especially unsurprising to me, as one who worked inside the Labor Department on minimum wage research, and who personally experienced the pressures to reach conclusions consistent with the Department's interests.

II. Assumptions and Claims

The economic analysis which concludes that minimum wages increase the unemployment of low-wage workers rests essentially on the belief that labor is no exception to the general rule that less is demanded at a higher price than at a lower price. Attempts to overturn this basic economic principle usually reduce to one of four assumptions or assertions: (1) there is a fixed number of workers demanded, more or less without regard to wage rates; (2) low-wage workers are victims of employer monopoly power rather than low productivity, so that raising their wage rates will not price them beyond their value to the employer and therefore will not price them out of a job; (3) higher wage rates will cause employers to use labor more efficiently, so that workers will then become valuable, and so will not lose their jobs; and (4) the increased "pur-

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Footnotes at end of article.

chasing power" caused by higher minimum wages will lead to a greater demand for goods, and therefore a greater demand for labor, offsetting any tendency toward unemployment. These arguments will be examined in order.

Fixed demand: The idea that an employer "needs just so many men"[1] is an old one, which dies hard. Factually, it can hardly stand up in face of declining employment after wage increases, or the virtual elimination of such occupations as Western Union messenger and elevator operators (despite the continued existence of telegrams and elevators). As a theory, it implies that the substitution of capital—and of higher priced labor—is impossible. The problem is not when the theory is stated directly and explicitly, but when it is implicitly assumed (and therefore insulated from critical scrutiny), as in the belief that more jobs for teenagers means fewer jobs for adults.

Employer monopoly power: Under special conditions, where there is only one employer in a labor market or a group of employers acting in concert, wages can be kept below what equally productive workers would earn otherwise. There is a special economic theory for such "exploitation" situations, and a minimum wage increase under those conditions would not produce unemployment.[17] Unfortunately, low-wage workers are very unlikely to be in such situations. All sorts of firms, industries, and even households employ unskilled workers, and collusion under these conditions is out of the question. Even such a staunch advocate of minimum wages as the late Senator Paul H. Douglas noted that the market for unskilled labor was one of "almost perfect competition."[18] The sad fact is that low-wage workers are not so much underpaid as underskilled, and there is no easy way around this problem without pricing them out of a job.

"Efficiency": Theories of offsetting rising wages by increasing efficiency have long been used to claim that minimum wage increases will not reduce employment. Unfortunately, those who argue this way have not distinguished real efficiency—larger output from given combinations of input—from a mere substitution of one input for another as their relative prices change. The examples they cite of "better" or "more efficient" methods of production after a minimum wage increase are methods well-known to employers before the imposed wage change, and were not used then simply because they were not the cheapest methods available under the previous input prices. If higher wage rates lead to the substitution of capital for labor, then by definition there will be more output per unit of labor, but it is mere word play to call this more "efficiency" if the product now costs more to produce and society has to support unemployed wokers as well.

Purchasing power: The doctrine that workers' increased purchasing power after a minimum wage increase will sustain employment has many problems with it,[19] but the most fundamental problem is that it assumes the very thing that is at issue: that the workers keep their jobs and work as many hours as before. If not, their hypothetical right to a higher wage rate will not buy anything. Workers can only spend real earnings, not hypothetical rights. Once this is realized, it is hardly necessary to go into the other deficiencies of the theory, such as the fact that inflationary increases mean that more spending power is not more purchasing power.

III. CONCLUSIONS

The minimum wage law addresses a serious social problem, but creates no new options for dealing with it. In fact, it simply reduces the set of existing options available to the parties—employers and employees—who must voluntarily agree if there is to be a job. Trying to make people better off by reducing their options seems questionable even as a theory. In practice, what has happened has been that fewer transactions (less employment) have taken place when there were fewer options open to the parties. It would be very surprising if it were otherwise.

The great unsolved problem remains of what to do about the poor in general, or the low-wage workers in particular. Low-wage workers are not changed by calling them higher-wage workers, any more than students are improved by calling them B students instead of C students. The tragic educational results from the process of upgrading by fiat is hardly a recommendation for extending this practice into the economic sphere. In both cases, it is of course much harder, much slower—and more heartbreaking—to try to create real skills and real achievements. And yet nothing else will really do the job.

Automatic escalation compounds the problems of the minimum wage law by making it possible to close our eyes to its effects hereafter. This seems unconscionable when those affected are poor, vulnerable, powerless, and inarticulate. If the Congress does not monitor what happens to them, there is no other power institution to do so. The set of incentives confronting the U.S. Department of Labor makes it unrealistic to expect it to critically evaluate minimum wage effects, and nearly 40 years of history makes it painfully apparent that it has no intention of doing so. Labor unions have their own imperatives and constraints. For them, the minimum wage law presents the same kind of opportunity that a tariff presents to a business firm. It is a way to price competitors out of the market. That this is accompanied by humanitarian statements may be a matter of rhetorical, or perhaps political, interest but it changes no economic fact. In the Union of South Africa, minimum wage laws were applied to native black Africans for the explicit purpose of stopping their competition with European workers.[20] In the days of the British Empire, British unions and manufacturers attempted to get minimum wages applied to India for similar reasons, though with different rhetoric.[21] American unions and businesses have been doing something very similar in Puerto Rico and other affiliated territories where minimum wages are set by tripartite boards of mainland Americans, often from competing firms.

The point here is not to depict anyone as particularly evil. The point is that powerful institutional incentives exist to use the minimum wage laws for purposes very different from those announced in the Act, and that these institutional incentives are likely to persist through turnovers of personnel in the future as in the past.

Special interests, recognized as such, may be kept within bounds. For the special interests revolving around the minimum wage laws, Congressional oversight seems especially needed, and therefore automatic escalation seems especially dangerous.

Finally, my hope would be that some way might be considered to have the statistical analysis of minimum wage effects performed by some organization other than the agency whose own fate is intertwined with that of the Fair Labor Standards Act.

FOOTNOTES

[1] Marvin Kosters and Finis Welch, "The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment," *American Economic Review*, June 1972; Thomas G. Moore, "The Effects of Minimum Wages on Teenage Unemployment Rates," *Journal of Political Economy*, July/August, 1971; Michael C. Lovell, "The Minimum Wage, Teenage Unemployment and the Business Cycle," *Western Economic Journal*, December 1972.

[2] Peter B. Doeringer and Michael J. Piore, *Internal Labor Markets & Manpower Analysis* (D. C. Heath & Co., 1971), p. 182.

[3] Jacob J. Kaufman and Terry G. Foran, "The Minimum Wage and Poverty," *Readings in Labor Market Analysis*, ed. J. F. Burton, Jr., *et al.* (Holt Rinehart & Winston, Inc., 1971), p. 508.

[4] See note 1 above.

[5] "...the estimated magnitude of these employment impacts and the distribution of these impacts vary among the studies." Statement of Assistant Secretary of Labor, quoted in *Minimum Wage Legislation* (American Enterprise Institute, 1977), p. 14.

[6] See note 1 above.

[7] *Employment and Training Report of the President* (Government Printing Office, 1976), pp. 242, 243.

[8] *Minimum Wage Legislation*, p. 2.

[9] U.S. Department of Labor, Bureau of Labor Statistics, *Youth Unemployment and Minimum Wages*, Bulletin 1657 (Government Printing Office, 1970), p. 138.

[10] Ibid., p. 149, Table 10.1. It should be noted that the Netherlands did not have a minimum wage before 1966, so the entry in the table for 1960–64 is misleading.

[11] *Minimum Wage Legislation*, p. 15.

[12] Yale Brozen, "Minimum Wage Rates and Household Workers," *Journal of Law and Economics*, October 1962.

[13] Quoted in *Minimum Wage Legislation*, p. 14.

[14] George Macesich and Charles T. Stewart, Jr., "Recent Department of Labor Studies of Minimum Wage Effects," *Southern Economic Journal*, April 1960. See also Thomas Sowell, "The Shorter Work Week Controversy," *Industrial and Labor Relations Review*, January 1965.

[15] Numerous specific citations of Labor Department studies are listed in Sowell, *op. cit.*; 243.

[16] Representative Dent quoted in *Minimum Wage Legislation*, p. 10.

[17] Albert Rees, *The Economics of Work and Pay* (Harper & Row, 1973), pp. 75–78.

[18] Paul H. Douglas, *The Theory of Wages* (Augustus M. Kelley, 1964), p. 78.

[19] See Sowell, *op. cit.*, pp. 241–242.

[20] P. T. Bauer, "Regulated Wages in Underdeveloped Countries," *The Public Stake in Union Power*, ed. Philip D. Bradley (Univ. of Virginia Press, 1959), p. 346.

[21] *Ibid.*, p. 332.

THE INADEQUACY OF THE OPPOSITION'S ARGUMENTS AGAINST THE GENOCIDE CONVENTION SUGGESTS IMMEDIATE RATIFICATION

Mr. PROXMIRE. Mr. President, the Genocide Treaty has been debated several times since its introduction in 1948. This delay in ratification of a treaty which outlaws the extermination of human beings, a crime abhorred by all, is very perplexing to many. It is difficult to comprehend any objections to such a seemingly necessary treaty.

During May of this year, the Committee on Foreign Relations held extensive hearings on this treaty. At this time the Honorable Arthur J. Goldberg, on behalf of the ad hoc committee on the human rights and genocide treaties, summarized and refuted the arguments offered by the opposition to the convention. I urge the Senate, upon reading Mr. Goldberg's remarks, to realize there is no substantial argument remaining that has not been answered. With that realization, I believe the Senate will finally act to ratify this important pact.

Mr. President, I ask unanimous consent that a portion of the testimony presented by Mr. Goldberg be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Let me comment on the arguments that have been given particular prominence by the opponents of ratification:

1. The contention that the Constitution prevents ratification of the Genocide Convention because genocide is a "domestic" matter is without foundation.

It would be a curious result if the United States were constitutionally barred from ratifying a Convention already ratified by 75 other countries, including such friends and democracies as the United Kingdom, Canada, France, Mexico, the Scandinavian Countries and Israel. Fortunately, there is nothing in our Constitution that imposes such a unique disability upon us.

By any objective standard, genocide is a matter of international concern and is, therefore, an appropriate subject for the exercise of the treaty-making power. In our shrinking world the massive destruction of a racial, religious or national group in one country has its impact on members of this group in other countries, stimulates demands for intervention, and inevitably troubles international relations. The fact that the United Nations General Assembly unanimously declared genocide to be a crime under international law in 1949 and that 75 members of the United Nations are parties to the Genocide Convention is further evidence that genocide can no longer be considered a matter wholly within domestic jurisdiction.

The protection of human rights is a matter of international concern. The United States has shown that it agrees with this view by ratifying the World War II peace treaties, the United Nations Charter, the Slavery Convention of 1926, and more recently the Supplementary Convention on Slavery (1967) and the Supplementary Convention on Refugees (1968). In the words of the Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year, chaired by retired Supreme Court Justice Tom C. Clark:

"Treaties which deal with the rights of individuals within their own countries as a matter of international concern may be a proper exercise of the treaty making power of the United States . . . It may seem almost anachronistic that this question continues to be raised." I agree with my former colleague, Justice Clark, that there is no real basis for challenging the authority of our country under our Constitution to enter into the Genocide Convention. The constitutional arguments against the Convention are indeed, as the committee said, anachronistic and without foundation in law.

2. The contention that the Genocide Convention would alter the balance of authority between the States and the Federal Government is unfounded.

The Constitution specifically gives Congress the power to "define and punish . . . offenses against the law of Nations." Genocide is an offense against the law of nations and is thus within the power of Congress to outlay. Moreover, as the ABA's Section on Individual Rights and Responsibilities said in its report:

"Ratification of the Convention will add no powers to those the Federal Government already possesses."

3. The contention that ratification of the Genocide Convention would subject American citizens to trial in foreign countries like North Vietnam on trumped-up charges of genocide is wholly false.

There is nothing in the Genocide Convention that would provide warrant for charges by North Vietnam that our prisoners of war, being held under conditions in violation of the Geneva Convention, are guilty of genocide. As the Foreign Relations Committee pointed out in its report, Hanoi can make trumped up charges of genocide against our servicemen, with or without reference to the Genocide Convention. In the words of the committee:

"Their peril will not be increased by approval of this convention while peril may be avoided for tens of millions by ratification of the convention."

Moreover, under the Genocide Convention, extradition would only take place in accordance with laws and treaties in force, and we have no extradition treaties with North Vietnam. Nor do we make such treaties with countries whose legal systems do not afford basic procedural safeguards. Moreover, we do not grant extradition in any event unless a prima facie case is established against the accused and unless the accused will be afforded by the requesting state the due process provided by our own law.

In reading the testimony of the prior hearings I have noted the discussion of concurrent jurisdiction under the Convention—jurisdiction of the state of which the offender is a national as well as the state in which the offense of genocide occurs. I noted the concern expressed on this matter by the senior Senator from Kentucky, Senator Cooper. Any expression from Senator Cooper deserves serious attention, and I have given it the serious attention that it warrants. I found in my own review of the legislative history that there was an agreed interpretation by the Legal Committee of the United Nations General Assembly that nothing in article VI shall affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state. The Foreign Relations Committee reached the same conclusion in its report. Nevertheless, I commend the committee for meeting this concern by recommending an appropriate understanding on this point. I note further from the testimony of administration witnesses that the Government could refuse to extradite where an accused American was standing trial in the United States or where the U.S. Government elected to try him here.

4. The argument that ratification of the Genocide Convention would subject the U.S. Government to irresponsible charges of Genocide arising out of Vietnam or our treatment of American Negroes is without foundation.

Here again, ratification of the Genocide Convention does not alter the present situation to our disadvantage. Even without ratification, there is nothing to prevent a country from making baseless charges of genocide against this country in the United Nations. If anything, ratification would improve our position, because the Convention requires an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." The tragic events in Vietnam and the terrible loss of life, both military and civilian, that has occurred there do not meet the treaty definition. Charges of genocide in relation to the treatment of the Negro community in the United States, which admittedly has suffered widespread discrimination for many years, also are not within the scope of the treaty. Ratification of the Convention would, if anything, help us rebut such charges by subjecting our behavior to a precise legal definition of genocide.

5. The argument that provision for the settlement of disputes by the International Court of Justice would override the Connally amendment and unreasonably limit our sovereignty is without substance.

This charge also lacks substance. The Connally amendment applies only to our acceptance of Article 36(2) of the Court's Statute, the so-called "optional clause" providing for compulsory jurisdiction across-the-board. Cases arising as a result of our adherence to the Genocide Convention would come under Article 36(1) of the Court's Statute, which covers the Court's jurisdiction as provided for in specific treaties. The United States has ratified many treaties containing the same type of provision for the settlement of disputes by the International Court as is contained in the Genocide Convention.

Among such treaties are the Supplementary Convention on Slavery, the Antarctic Treaty, the Statute of the International Atomic Energy, and the Convention on the Privileges and Immunities of the United Nations ratified just last year. A list of these treaties is contained on page 215 of this subcommittee's 1970 hearings. Indeed, our country in the ratification of many treaties has proposed that the International Court have jurisdiction over disputes. Interestingly enough, our efforts in this direction have frequently been frustrated by the Soviet Union, not Congress, whose members on numerous occasions have advocated increasing resort to the International Court.

This provision for the settlement of disputes over the interpretation of the Genocide Convention does not unreasonably limit our sovereignty. Our interests are better served by having any charges of genocide against us considered in a judicial forum like the International Court, rather than more politically motivated forums. Of course, by this provision we do undertake a commitment limiting our freedom of action in a limited sphere, as do the other parties to the Convention. This exchange of commitment is inherent in any treaty to which we become a party. Where the exchange of commitments serves our national interest, as it does here, it provides no valid basis for objecting to the treaty.

6. The argument that various provisions in the Convention—"in whole or in part", "mental harm," "direct and public incitement to commit genocide"—are loosely drafted and potentially harmful to our interests is without foundation.

Words in a statute or treaty are not self-interpreting. They must be read in the context of other provisions and in the light of the legislative or drafting history. The hypothetical interpretations of the Genocide Convention advanced by the critics are invalidated by the language of the Convention itself and by the records of the negotiation.

Thus "in whole or in part" does not mean that the killing of a single individual becomes genocide. As the negotiating history makes clear, substantial numbers must be involved, and the acts of homicide must be joined by a common intent to destroy the group, for the definition of genocide to be satisfied. The understanding recommended by the Foreign Relations Committee to confirm this point is wholly consistent with the drafting history.

"Mental harm," in turn, would not support propaganda charges of harassment of minority groups, as charged by some critics, because mental harm becomes an element of genocide only when done with an intent to destroy a group. Moreover, as the negotiating history shows, it was inserted for the narrow purpose of prohibiting the permanent impairment of mental facilities, as from the forcible application of narcotic drugs.

"Direct and public incitement to commit genocide" does not cover constitutionally protected speech. It covers speech which calls for the commission of mass murder, which is actionable under our Constitution as in other countries.

As the Supreme Court declared in *Brandenburg* v. *Ohio*, 395 U.S. 444, "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation *except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.*" (Emphasis added.) In any case, no treaty can override a provision of the Constitution, and there is no doubt that the legislation passed in implementing the Genocide Convention will be interpreted in accordance with the first amendment.

In conclusion, I find the objections to ratification of the Genocide Convention without

substance. The reasons for ratification, as I suggested earlier, seem to me compelling. Some cynics doubt that the Genocide Convention really "matters". Some say it ranks at the bottom of our foreign policy priorities. Some even say it is "an exercise in futility".

I do not agree. We have heard this argument now for over twenty years. I believe the time has come to devote more of our energies and resources to the long-term task of constructing some kind of decent world order. Ratification of a convention outlawing the most blatant crime against humanity will not by itself provide the answer. But it is surely a good place to begin. It should be one of the foundations of the rule of law among nations—a rule of law which, in the long run, is the only assurance of lasting peace.

THE MYTH OF ARMS CONTROL

Mr. GOLDWATER. Mr. President, the press in the last 2 days has been filled with statements made by President Carter as to the nearness of arms control agreements with the Soviets. This is wishful thinking stretched to its most dangerous point. Frankly, there is no such thing as arms control, and it can never be effective if only two countries are involved. The Wall Street Journal has a very fine editorial entitled, "The Myth of Arms Control," which I think should be read by every Member. Therefore, I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE MYTH OF ARMS CONTROL

When the first strategic arms agreement was concluded back in 1972, we wrote that for the Soviet Union, "the five years of the offensive-weapons agreement can be a pretty good five-year effort at arms building." And as that agreement expires today, we look back on five years of a steadily mounting Soviet threat.

During this period of arms control, the Soviet Union expanded its missile submarine force by more than 60%, surging to 909 missiles from 560 while the U.S. remained constant at 656. To facilitate this surge within the terms of the agreement, the Soviets have retired a few land-based missiles, dropping their total to 1,477 from 1,530, while the U.S. remained constant at 1,054. The Soviet long-range bomber force is counted at 135 today compared to 140 five years ago, while the U.S. force has dropped to 441 from 552.

Out of SALT-I, we got the retirement of 53 obsolete Soviet missiles. This is the price we received for agreeing not to exploit the lead in antimissile technology we held in 1972. Our ABMs have now been deactivated, while the Soviets retain the older system they have around Moscow, and have expanded fixed air-defense missiles to 12,000 from 10,000.

As the agreement expires, further, the Soviet momentum shows anything but signs of slackening. They have only started to replace their land-based missiles with a more modern generation with multiple warheads and high accuracy. Defense Secretary Brown recently revealed that they have already started to develop four even newer missiles as follow-ons for the generation now going on line.

In addition they are deploying the mobile SS–20, a modern ballistic missile with ranges that threaten our European allies. The SS–20 is the top two stages of the intercontinental SS–16 and could easily be upgraded into a mobile intercontinental missile. The Soviets have upgraded their conventional forces in Europe and their navy. They are steadily deploying their new Backfire bomber, insisting it is not a strategic weapon though it could reach the U.S. In any event, the Backfire is a potent threat to Europe.

The U.S. force shows nothing like the same across-the-board surge. Measured in constant dollars, the U.S. defense effort fell through most of the five-year period, and has only now started to revive. Still, its force was improved in significant ways during the interim agreement. The most important development was the introduction of more multiple warheads for both land and sea forces. This has allowed the U.S. to retain a sizeable lead, 11,000 to 3,800, in deliverable warheads. This advantage is so far only partly offset by the larger size of Soviet missiles and warheads, but it will shrink as multiple warheads are installed on more Soviet missiles.

The U.S. also retains several technological advantages. It continues to lead in warhead accuracy. It is building its new Trident submarine, though the B1 bomber has been killed. The U.S. is developing a new mobile intercontinental missile, the MX. Its most promising development is the subsonic but highly accurate cruise missile. The cruise missile will be needed if the U.S. bomber fleet ever has to penetrate the heavy Soviet air defense. It will be even more important as a tactical weapon, with either nuclear or conventional warheads. In particular, the cruise missile is the answer to the threat of the SS–20 and the Backfire in the European theater.

This, then, is the balance at the expiration of SALT-I's interim agreement on offensive weapons; the defensive treaty against ABMs goes on in perpetuity. However optimistically or pessimistically one judges the current balance, it is a balance struck by the fears and ambitions, resources and will, of the two sides. It is hard to discern where SALT-I made more than a marginal difference, except perhaps in delayng U.S. recognition of the true magnitude of the Soviet arms-building thrust.

This experience begs to be recognized as we negotiate in SALT-II. In retrospect, the 1972 negotiations are best seen as a Soviet drive to stop U.S. ABM technology. The negotiations today are best seen as a Soviet drive to stop U.S. cruise missile technology. If they can constrain cruise missiles through SALT, this affects the cost-benefit calculations for the entire cruise missile program. If the constraints are tight enough the entire program could die, as the ABM did, for budgetary reasons. If this ever happens, we had better get a lot more in return than 53 obsolete ICBMs. In the wake of President Carter's decision to kill the B1, the cruise missile weighs much heavier in the strategic balance. Beyond that, there are two particular problems with limiting it by treaty.

The first is the European theater. The cruise missile is the key to reinvigorating the NATO alliance, though other steps are also needed. Under the treaty the Soviets want, land-based cruise missiles would be limited to a range of 600 kilometers, and we could not circumvent this by selling the technology to our allies. But the SS–20 would not be limited, though its range is some 4,000 kilometers. Our allies' subsonic weapons could not reach Russia, though they will be under the guns of ballistic missiles based there. Are we then to ask them to do more for the joint NATO effort?

The second problem is the impossibility of detecting Soviet cheating on any cruise-missile limits. We have had enough trouble monitoring their behavior under the SALT–I treaty, which concerned large and mostly stationary objects. The cruise missile is small and mobile. Range limits are particularly ludicrous, since range essentially depends on how much gas you put in the tank. The Soviets have large numbers of cruise missiles already deployed, and there will be no way to tell if the crucial guidance technology is installed in them. If a treaty limits the cruise missile, the only safe assumption is that the Soviets will have the weapon and we will not.

Yet such a crippling treaty, to judge from our experience in watching these negotiations, is by no means out of the question. Indeed, our experience makes us especially nervous when we hear optimistic talk about SALT from a President who badly needs a foreign-policy spectacular to obscure domestic political reverses.

There is driving force, as well, in the myth that arms control is the only route to safety in a nuclear world. With the offensive-arms agreement expiring today, the world will be no more or less dangerous tomorrow. Safety is maintained by a stable military balance, which treaties can impede as well as enhance. As we read the lessons of SALT–I, a safe military balance will depend only marginally on negotiated agreements. With a treaty or without one, a safe balance will depend primarily on whether or not the U.S. has the will to step up its own defenses to offset the growth of Soviet arms.

TRIBUTE TO KENNETH BOUSQUET

Mr. STENNIS. Mr. President, I have been very saddened to hear that Mr. Kenneth Bousquet died in his sleep in Sun City, Ariz., early on Wednesday, October 5. Until his retirement 5 years ago he had been for many years a key staff member of the Senate Appropriations Committee.

Ken became the subcommittee clerk of the Public Works Appropriations Subcommittee when it was chaired by the late Senator Carl Hayden, Subsequently he served in turn under the late Senator Allen Ellender, and during the early part of my chairmanship. He rendered distinguished and outstanding service to the subcommittee and to the Senate. He was truly an expert in the fields of water resources and atomic energy, and was a dedicated and valued assistant to all of us on the Appropriations Committee.

After Ken's retirement from service with the Government he worked in private industry, and again retired this year. He and his wife Margaret moved to Arizona less than 2 months ago.

My deepest sympathy and every condolence is extended to Mrs. Bousquet and to their two sons, in their sudden and tragic loss of this fine man.

UNITED STATES-MIDDLE EAST POLICY

Mr. DANFORTH. Mr. President, it was with disbelief that I read this past weekend of the latest American position on the Middle East, issued as a joint United States-Soviet statement. The joint statement, together with Dr. Brzezinski's interview on Canadian television, indicates a shift in the administration's position which will impede the cause of peace in the Middle East.

Although I am disturbed by the joint statement as a whole and by the Brzezinski interview, three concerns deserve special comment.

First, I am concerned about what the administration means when it calls for "insuring the legitimate rights of the Palestinian people." We are told by the administration that Palestinian "rights" are no different from Palestinian "interests" which America has said in previous statements must be recognized. The ad-

ministration maintains the exact nature of what constitutes "legitimate rights" could be worked out at Geneva.

Such explanations may suffice among those uninformed about the subtleties of Middle East diplomacy, but to believe that such an explanation could possibly be accepted by the antagonists in the Middle East reflects sophomoric thinking by the Carter administration. We all know that the language of diplomacy often contains code words which have meanings far beyond their dictionary definition. Just as the phrase Palestinian "homeland" has a meaning critically different from Palestinian "entity," so Palestinian "rights" are in no way comparable to Palestinian "interests."

To the PLO the "legitimate rights of the Palestinian people" means their right to exercise sovereignty over the land of Israel. Most simply put, this innocent sounding phrase means, in the language of the Middle East, the destruction of the State of Israel. The use of these inflammatory code words can only harden the positions of both sides, undermine any voice of moderation, and further delay a peaceful resolution of the conflict.

Second, the October 1 statement conspicuously omits any reference to Resolutions 242 and 338. Until last weekend, the Carter administration had affirmed the policy of the prior administration that these resolutions formed the foundation for a peace settlement, and that any recognition of the PLO depended on PLO acceptance of these resolutions and recognition of Israel's right to exist.

All these references are conspicuously missing in the new statement, and their absence strengthens the position of the PLO. Instead of referring to 242's "secure and recognized boundaries" which, by implication, could be defended unilaterally by Israel, we now find that the security of borders is to depend on international guarantees, with the possible introduction of Soviet and American troops. Under this kind of arrangement, the United States and the Soviet Union would be embroiled in the Middle East affairs indefinitely. I do not believe that this is the path to peace. Prior to the bizarre joint statement issued this past weekend, I am unaware of any responsible party who has seriously advanced the possibility of dispatching American troops to the Middle East, much less troops of the Soviet Union. Such a possibility is, to me, unthinkable.

Finally, the United States-Soviet agreement gives the clear appearance of an attempt by the great powers to impose a settlement on the parties to the dispute. This is a contravention to our 1975 memorandum of agreement with the Government of Israel to consult fully with it. It is also a sudden and totally unexplained reversal of previous public statements made by President Carter. Dr. Brzezinski gave additional credence to the possibility of an imposed settlement when he stated Sunday on Canadian television that:

> The United States has a legitimate right to exercise its own leverage, peaceful and constructive, to obtain a settlement.

The role of the United States should not be to exercise leverage for the purpose of imposing a settlement on our ally, Israel. Rather our steady support for Israel should provide the basis for a durable peace. Previous commitments aside, I would hope that history has taught the administration that imposed settlements cannot achieve a true and lasting peace—not when the causes of a conflict are rooted deeply in cultural and religious differences—and not when either side views the externally contrived "solution" not to be in its long-term interests.

Mr. President, this year has seen a dramatic change in the U.S. commitment to South Korea and a diminution in our commitment to the Republic of China. Now, as the administration has determined to play super power politics with the Russians, our commitment to Israel appears to be weakening.

In August 1976, candidate Carter said:

> One of the things that has aggravated the Mideast situation is the uncertainty lately about where our nation stands that makes the leaders of Israel and the people of Israel uneasy and that builds up false hopes in those countries that are probing for weaknesses in Israel or weaknesses in our commitment to Israel.

At best, this administration's policies are guilty of these charges. At worst, the hopes building in the Arab countries are not false. In either case, the position of this administration is wrong and invites disaster in the Middle East.

TASK FORCE ON HOUSING COSTS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Minnesota (Mr. HUMPHREY), I ask unanimous consent that a statement by him on the convening of a Task Force on Housing Costs, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HUMPHREY

I am pleased to advise my colleagues that on October 5th and 6th a Task Force on Housing Costs, appointed by Secretary Patricia Harris, will be convened at the Department of Housing and Urban Development. Secretary Harris has asked the Task Force, whose membership includes experts in a wide variety of housing-related fields, to recommend to her ways in which the Federal Government, particularly HUD, might act to reduce the cost of new housing to the consumer. Certainly the need for such an analysis is long overdue.

We are all painfully aware that housing costs have been escalating so fast in recent years that the goal of owning a home is now beyond the reach of an ever-increasing number of American families. The phenomenon is one that affects potential home buyers in many income brackets. Thus, wide segments of our constituencies are finding it increasingly difficult to afford the kinds of homes they could have purchased only a few years ago. Fortune magazine reported that in 1950, 70 percent of American families could afford the median priced new home; in 1975, the percentage had dropped to 40 percent. Time magazine reports the MIT-Harvard Joint Center for Urban Studies finding that the monthly cost of owning a new home has increased 102.3 percent since 1970, while median family income has increased only 47 percent in the same period.

Rising construction costs have placed a similar burden on apartment dwellers. The attainment of the goal of a decent, safe, and sanitary dwelling for all Americans is rapidly being impeded by the high cost attached to its achievement. Middle income residents who can no longer afford to purchase a home may soon find they can neither afford to move to a new apartment. Low income residents will find fewer subsidized units available as the higher costs of production will ensure a diminishing number of such units.

In recent decades, the Federal Government has consistently pursued a policy of encouraging home ownership through the adoption of a variety of measures such as tax incentives and mortgage insurance programs. These efforts have been successful in enabling a greater percentage of families in America to own homes than in any other nation in the world. The Federal Government has also provided housing subsidies to permit senior citizens and other lower income individuals to live with dignity in decent housing. Present circumstances threaten to thwart this established policy. I therefore believe the Federal Government has an obligation to assist in reversing this trend.

The factors responsible for the rising cost of new housing are varied and complex. We must seek to understand them. We must also recognize that it may not be possible for the Government to control some, while controlling others may threaten to undermine competing public policy objectives, such as the preservation of the environment. The solution will be no simpler than the problem, but this is no excuse for evading it. It is for this reason that the comprehensive approach contemplated by Task Force Chairman William J. White, HUD's General Manager of the New Community Development Corporation, is so appropriate.

Recognizing that the first task of government at every level is to assure that its own actions do not contribute unnecessarily to the price its constituents must pay for housing, Mr. White formed a working group of HUD officials to prepare a report for the Task Force's consideration focusing on Federal, State and local government regulations—such as environmental reviews, building codes, zoning restrictions, and FHA processing requirements—which affect the production and cost of new housing.

The second task will be to identify ways in which the government can encourage the private producers of housing to reduce their own costs and to pass these savings along to the consumer. As the first step in this effort, Secretary Harris has asked that the reasons for the skyrocketing costs of lumber and insulation be investigated. The input of Task Force members from the private sector should prove to be of great assistance in devising ways to cope with the rising costs of these and the other component commodities employed in housing construction.

The Task Force faces a difficult assignment indeed, and it may be years before its efforts will have an impact on the housing market. Nonetheless, its creation represents the first necessary step the Federal Government must take if it is to hope to exert some control on the rising cost of housing. The Secretary of the Department of Housing and Urban Development is to be commended for her leadership in this endeavor. I am confident that the Task Force under the competent direction of Mr. White will prove to be of great assistance to all concerned with combating the rising costs of housing.

SOVIET CIVIL DEFENSE

Mr. HATCH. Mr. President, in today's world everything that we do or every Soviet action attracts some amount of attention. It has become common knowledge in recent years that the Soviet Union has placed more and more emphasis on civil defense. Under the lead-

ership of Deputy Minister of Defense, Colonel General Alexander Attunin, the Soviet Civil Defense system has reached its peak. Immediately after World War II, the Soviets began an intensive program to protect civilian, military, and industrial centers. The Soviet Union has established a series of civil defense training centers in each of its major cities. These centers conduct intensive training to insure the survivability of the working people so that the Soviet industrial capacity will not be destroyed in time of war. Every major factory is now equipped with a giant underground shelter that will withstand the attack of nuclear weapons. Every new civilian apartment house is being built with a shelter underneath the building. This will protect much of the Soviet working force.

The people in the Soviet Union accept this as their way of life. Here in the United States we have tended to push aside the thought of nuclear attack. It has been over 150 years since the British brought warfare to the United States on its home soil. All of the succeeding wars in the world have been fought on foreign ground. Yes, the United States has fought in World War I and II, the Korean war, and even the Vietnam war, but we sent our troops abroad to fight. After World War II the United States had the advantage of being the only nation with the capability of carrying out atomic warfare. With the development of the B–36, the world's first intercontinental bomber, the United States had the ability to inflict total destruction upon any nation which it saw as an aggressor upon the security of our borders. Then Secretary of State John Foster Dulles, under the direction of President Eisenhower, stated that the United States would rely on a new strategic doctrine which would base, in an unprecedented degree, the Nation's security on a single weapon, the nuclear deterrent. This doctrine became known as "massive retaliation."

This approach by the United States prompted the Soviet Union to step up its civil defense and nuclear development programs. In 1957, just 20 years ago this week, the bubble of security of the United States was exploded. The Soviet Union launched Sputnik and served notice that it now had the capabilty to threaten the very heartland of America. The reaction in this country was one of panic followed by a wave of construction of residential bomb shelters. Gradually the scare diminished as we went from the cold war to the age of détente. Bomb shelters became playhouses for the kids, and the supplies in public civil defense shelters throughout the United States were stolen or ruined by neglect and improper storage.

In the Soviet Union, the civil defense program continued. The people there could not forget the horrors of the German blitzkrieg in World War II. When the Soviet Government ordered its citizens to prepare to endure warfare at any time, the people understood all too well. The Soviet population had grown up in a much rougher political climate than their counterparts in the United States. Many older Russians remembered the Communist Revolution of 1917 and even further back to the time of the Czars. They continued preparations for surviving an attack and today the Soviets have the world's most complete civil defense system. Our SALT negotiators must realize that the Soviet Union is ready to go to war at any time and if the Soviets feel that an advantage can be gained in talks with the United States by threatening war, they will do so. This Nation must take a tougher stand in the current SALT talks and at the same time make a strong effort to improve our own civil defense. I recently read an article that discusses this matter in detail in the October edition of the Air Force magazine. The article, entitled "Soviet Civil Defense and U.S. Strategy," by Thomas H. Etzold, professor of strategy at the U.S. Naval War College, raises some vital and interesting questions. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SOVIET CIVIL DEFENSE AND U.S. STRATEGY

(By Thomas H. Etzold)

Recently, Soviet civil defense and war survival programs have seemed fundamentally to threaten the strategies intended to ensure the security of the United States. Mutual assured destruction and associated ideas about the "sufficiency" of strategic nuclear forces in an era of parity have depended on the idea that, without terminal defenses against ballistic trajectory weapons, the citizens of the United States and the Soviet Union would be hostages, a situation that would enhance mutual deterrence. Yet, Russian developments in civil defense, as outlined in the February '77 issue of Air Force Magazine, have raised the disturbing possibility that soon only Western populations may be sufficiently vulnerable to deter their governments from effective political-military pursuit of national interests.

Indeed, Russian war survival measures have assumed impressive dimensions. The Soviet government has begun civil defense training for much of the population, and it has continued to train and equip troops for nuclear, biological, and chemical warfare. There are special "civil defense troops" and a civil defense academy in the Soviet military. The Russians are dispersing industry and hardening industrial and military sites including command, communications, and missile installations; they are storing grain; and they are endeavoring to protect high government officials and significant numbers of workers through a program of shelter building and city evacuation planning.

In the context of the Russian civil defense effort, three questions require attention. There is first the question of what problems Russian civil defense may raise for American strategy. Second, there is the deceptively difficult question of just what these programs may mean. And, finally, there is the immediate question of how the U.S. should respond to Soviet activities in this field.

THE PROBLEMS FOR AMERICAN STRATEGY

Most commentators on Soviet civil defense have concentrated on the problems it may pose for Western strategy. Three types of difficulties are evident. One relates to general nuclear war, a second to limited strategic options, and a third to ordinary political intercourse, sometimes known as diplomacy.

The implications of Soviet civil defense have been most alarming to observers who consider the possibility of full-scale nuclear war. Analysts cited in this magazine in February concluded that, as a result of civil defense measures, only about four percent of the Soviet population would perish from blast, fire, and initial radiation, vs. forty percent or more in the West. Similarly, these analysts estimated that the Soviet Union might be able to recover from nuclear war in two to four years, or three to six times faster than the U.S. They have reasoned that the United States is losing the ability to destroy the percentages of Soviet population and industry long thought necessary to deter Soviet leaders from initiating nuclear war or other major aggression. Coupled with the widespread misgivings about détente and trends in the overall strategic arms relationship, Soviet war survival measures have seemed palpably to menace American security.

However, the reasons for anxiety about Soviet civil defense in relation to a strategic nuclear exchange should be offset to some extent by several factors. One little-known fact or bearing on the problem is that in recent years plans for employing American strategic nuclear forces have not envisioned the kind of one-time strike usually used as the basis for calculating casualties and damage. As Gen. Maxwell Taylor has noted in his book, *Precarious Security* (W. W. Norton, New York, N.Y., 1976), in recent US strategy, assured destruction capability has meant the ability to kill X percent of the Soviet population and destroy X percent of Soviet industry *X times at intervals*. If general nuclear war should come, the Soviet Union would have to expect to be attacked on an assured destruction scale several times and at intervals varying from a few weeks to several months.

In succeeding strikes, due to reduced warning and political direction, depletion of emergency stocks, and damage to transportation and other facilities, the consequences of follow-on strikes would be severe. The more the Soviets concentrated population to begin reconstruction in the aftermath of a first or second phase of attack, the more effective further attacks would be. The more they dispersed to avoid such consequences, the slower recovery would go forward. In addition to the effects of concussion, firestorm, and radiation, there would be the incalculable toils of disease, infirmity, and disruption of complex communal life. There might also be unexpected consequences from the selfishness and violence that the initial survivors of holocaust could be expected to display.

In short, estimates of Soviet casualties and damage have been based on inadequate appreciation of American targeting doctrine and its implications. Understandably, Secretary of Defense Harold Brown has expressed confidence that Soviet civil defense efforts are insufficient to blunt significantly the effects of general nuclear attack by the United States.

The second strategic problem facing the US in connection with Soviet civil defense programs grows out of contemporary scenarios concerning crisis bargaining, coercion, and the attractiveness of possessing, perhaps using, limited strategic options. In the Nixon-Schlesinger years, officials argued that the absence of limited strike options eroded the credibility of American strategic deterrence, because it left a too-wide gap between all-out war and doing nothing in the face of limited attack or provocation.

Those concerned over the effects of Soviet civil defense have suggested that because the Soviets have dispersed and hardened industrial and military targets as well as increased the numbers of launchers and associated facilities, the effects of a limited strike would be trivial, and therefore, acceptable to the Soviet Union. But, because of the collocation of American military installations and cities,

and due to the lack of hardening and population protection measures, similar limited attacks on the United States would produce results by no means trivial or acceptable.

Further, in this view, the growing Soviet capability to evacuate and/or shelter the populations of major cities strengthens Russian immunity to the threat of a limited strike, say, against one or two cities. To trade New York for Moscow, or St. Louis for Leningrad, never seemed a happy prospect. Now, so the argument goes, in addition to being a catastrophe it may be a bad trade.

In the case of limited option strategy, as in that of general nuclear war, there are countervailing considerations. One is that the effects of using nuclear weapons have always been presumed to be both psychological and physical. There is a correlation between the two, to be sure; but it is probably not an exact correlation. This point is important because the leadership of the Soviet Union is uniquely sensitive—even vulnerable—to internal disruptions. It fears challenges to authority and potential losses of control even in the most minor contexts, as the interesting and pronounced reaction to recent explosions in the Moscow subway demonstrated. The detonation of a nuclear device on or over Soviet territory would pose an enormous hazard to the political stability of Soviet leadership, and is, therefore, something they would want to avoid.

Even more important in keeping the limited options open, however, are such easily available technological alternatives as dedicating a specific, small portion of US strategic forces to limited strike operations and fitting them with dirty warheads, or perhaps employing ground-burst weapons in limited strike situations. Indeed, there are many alternatives available to ensure that the consequences even of limited strike will not seem trivial to Soviet leaders.

The third category of strategic problem, that of ordinary political intercourse, may seem both out of place in this discussion of strategy and relatively minor by comparison with the foregoing two topics. But it is neither mislocated nor of small concern. Both general nuclear war and limited strike operations remain remote, though unpleasantly real, possibilities. In contrast, the difficulty of pursuing national interests in more or less peaceful competition with the Soviet Union is a daily problem, and it is a problem of strategy as well as of diplomacy. For the weight of a state's views has always depended in large measure on its ability to compel agreement. It may be true that, as the great diplomat Francois de Callieres wrote nearly 400 years ago, "Every Christian prince must take as his chief maxim not to employ arms to support or vindicate his rights until he has employed and exhausted the way of reason and of persuasion." It is no less true, in George Kennan's words, that "You have no idea how much it contributes to the general politeness and pleasantness of diplomacy when you have a little quiet armed force in the background."

The argument with regard to ongoing political relations is that if the Soviets believe they possess genuine capability to survive nuclear war, and if correspondingly they feel less than deterred, they may become politically more assertive, more willing to run risks. The result might then be many more of those individually marginal but cumulatively costly Soviet gains so typical of the cold war in the 1950s and 1960s. Of this possibility, more later.

WHAT THE RUSSIAN PROGRAMS MAY MEAN

The purpose of introducing this category of questions is to raise doubts, not to provide answers. As noted above, most American comment on Soviet civil defense programs has—perhaps rightly—focused on the problems of strategy. However, the unfortunate side effect of this focus has been the emergence of an unproven but widening conviction that the Soviets intend principally to affect the East-West strategic relationship, to bring opportunities and direct gains to themselves, and that, therefore, Russian civil defense immediately threatens the West.

As a result of the conviction mentioned above, too few questions about the Soviet effort are coming up for discussion. Many of the undiscussed issues are of pressing relevance to strategic circumstances. Is, for instance, the Soviet civil defense effort in fact an indication of Russian intention to "go to the brink" from time to time, and so to intimidate the West into concession? Or are war survival programs evidence of Russian pessimism regarding the ability of the powers to avoid nuclear war sometime in the future, no matter how hard they may try to do so? Is it a sign of concern over Western intentions, or over Chinese? To what extent is it related to Russian perception of the hazards of nuclear proliferation?

There is another extremely important set of questions. Is it possible that the Russian civil defense programs are more internal than external in their origins and implications? Could they be the result of bureaucratic politicking, as are many of our most costly and visible programs? Could they be designed to give the leadership enhanced control over the population, or the population increased dependence on and confidence in the leadership? Is the dispersal of industry a sign of Russian determination to complicate Western targeting, or is it merely a normal accompaniment to the development of Russia's still-primitive internal transportation system? Are grain stockpiles accumulated to anticipate holocaust, or are they a way of explaining perennial agricultural shortages and, possibly, hedging against price fluctuations in world commodities markets?

So far, the foregoing questions have received inadequate public attention. All of them, however, deserve careful analysis before one reaches conclusions on the meaning, implications, and requirements of Soviet civil defense for the West.

HOW THE UNITED STATES SHOULD RESPOND

With the issues of strategy and the possible meaning—or meanings—of Russian civil defense efforts clearly in view, what should the United States do in response to Soviet programs? An answer here must comprise three elements: one practical, one doctrinal, and one political, and in that order of importance.

First the practical element. As the editors of this magazine suggested in February, the U.S. should immediately augment its present meager efforts in civil defense. It is evident that the United States is not going to devote resources to such programs in amounts anything like those the Soviet Union has spent in recent years, and that the U.S. cannot really expect to attain equivalency in this area soon, if ever. Indeed, there is no reason to believe that equivalency in such measures is necessary either to stable deterrence or to adequate freedom of decision in political matters. There is, however, reason to think that both friends and enemies would consider increased attention to civil defense an indication that this country was determined to hold its own in working out inevitable conflicts of interest with the Soviet Union.

It is possible that, with further study, the U.S. could determine how to derive the most immediate benefits from moderate increases in civil defense spending. In practice, this would probably mean that protection of high government leaders, military communications and command facilities, and some additional strike forces or other military installations would take precedence over civilian shelter plans. In the short run, to be sure, this would be impressive to enemies, and, if adequately explained, tolerable to the American people.

Second, the doctrinal element. It is essential here to keep in mind that definitions of strategic sufficiency have always been arbitrary. There is no magic attached to such figures as the traditional requirement of killing twenty-five percent of Soviet population and destroying fifty percent of Soviet industry to achieve mutual assured destruction and thereby deter the Russians. Such figures were originally the result of "flat of the curve" reasoning; that is, they were the figures at which force planers of the early 1960s ran out of targets substantial enough to result in significant additional increments of damage. Forces then were sized to achieve redundancy for the sake of reliability as well as for the phased-attack plans mentioned above.

There is no evidence that the leaders of the Soviet Union are willing to risk casualties and damage in a nuclear exchange, even at much lower levels than the twenty-five to fifty percent formula. On the contrary, they give every evidence of fearing nuclear war and desiring to avoid it. As the New York *Times* noted in May 1977, the present Administration believes that the goals of mutual assured destruction, even as modified during the tenure of James Schlesinger as Secretary of Defense, were not only abstract and arbitrary, but imprecise.

Deterrence does not depend on equal security for each side, but on unacceptable insecurity for both. Increasingly, recent studies have pointed to the low level of nuclear damage either side may be willing to tolerate rather than to the high level of risk and sacrifice each may accept.

Finally, the political element, the most important of all. Here I return to the difficulties of the third category of strategic prolem, that occurring in the context of ordinary political intercourse and relating to the Soviets' potential as aggressive risk-takers.

It is essential to recognize that the more the U.S. makes of Soviet civil defense, the more political advantage it forfeits. By exaggerating the real threats and strategic challenges posed by these developments, Americans run the risk of talking themselves into weakness of will, and in that sense of doing the Soviets' work for them. As argued here, Russian civil defense is virtually without strategic meaning in terms of the actual difficulties raised in the event of general nuclear war; and the difficulties of the limited strategic options scenarios are relatively simple to overcome. But Russian efforts are politically meaningful if the United States scares itself and its friends to the point that if shows political timidity or weakness in bargaining.

The immediate response required of the U.S. by Russian civil defense and war survival measures is not to scurry about in frantic or futile attempts to redress the balance of capabilities, even if some gestures toward improved civil defense should be made for psychological reasons. Instead, the immediate requirement is to affirm that deterrence works. This country possesses adequate strategic systems today. The United States government and the American people ought, therefore, to behave with the confidence that, for the present, the Russians are fully as deterred as we are. They ought also to keep in mind that the continuation of mutual deterrence will depend on the coherence of the relationship between strategic systems and strategic doctrine. Both will require improvement in the coming years.

BLACK VOTING POWER

Mr. BAYH. Mr. President, some of our Nation's black leaders have expressed concern with my proposed constitutional amendment which would provide for the

direct election of both the President and Vice President of the United States. Their concerns are predicated on the hypothesis that minorities will be the biggest losers in the transition to direct election. This hypothesis, which I might add is totally untested, is an offspring of the premise that large urban areas elect Presidents because such areas are located in States with substantially large electoral votes. A second premise is that since a large proportion of the black population live in such areas, their vote, therefore, is often instrumental in the election of the President. Thus, it is argued if our system adopts the direct election in lieu of the electoral college, the minorities in the urban areas will sacrifice their relatively advantageous position in the electoral process for a much less position.

Mr. President, such is not the case. There is a growing body of research which indicates that, first, blacks do not enjoy an electoral advantage under the present system, and second, blacks will in fact be the losers if we keep the present system.

One reporter who has taken the time to logically examine the voting power of blacks within the electoral college is Tom Wicker. Because Mr. Wicker has presented a very coherent article on the question of black voting power within the electoral college, I ask unanimous consent that his remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

BLACK VOTING POWER

(By Tom Wicker)

Politically concerned blacks have usually opposed abolition of the Electoral College and the substitution of direct popular voting in Presidential elections. But now that the Senate Judiciary Committee has approved a constitutional amendment to that effect, black leaders owe it to their constituents at least to re-examine their position.

When Vernon Jordan, executive director of the Urban League, criticized President Carter last summer for paying too little attention to the needs of blacks, for example, one of his specific targets was Mr. Carter's support for abolishing the Electoral College. Mr. Jordan's position was amplified, as follows, in later testimony to a Senate subcommittee by Eddie N. Williams of the Joint Center for Political Studies:

"Blacks are ten percent of the national electorate; they are strategically concentrated in the metropolitan areas of key states with large numbers of electoral votes; historically they have tended to vote as a block; and they are widely regarded as being able to wield a balance of power in close elections in key states."

That view apparently was reinforced by last year's election, in which the Joint Center calculated that black voters were directly responsible for Carter victories in Ohio, Pennsylvania, Missouri, Texas, Louisiana, Mississippi and Maryland—more than enough states to account for Mr. Carter's slender 297-to-241 electoral-vote margin.

But that leaves out of account the fact that Mr. Carter lost Illinois, in which he had heavy black support, as well as Michigan, Indiana and Virginia, in each of which more than 90 percent of black voters supported Mr. Carter. The winner-take-all effect of the Electoral College nullified every one of those black votes; and it greatly diminished the electoral significance of hundreds of thousands more in states Mr. Carter won by wide margins (he'd have gotten the same number of electoral votes with a popular plurality of one vote).

Mr. Carter won the popular vote, moreover, by about 1.7 million votes. Therefore, it would have taken a switch to Gerald Ford of about 850,000 non-black votes to change the popular outcome. But just 9,245 non-black votes switching from Mr. Carter to Mr. Ford in Ohio and Hawaii would have given Mr. Ford an Electoral College victory, while hardly changing the popular-vote totals. What would all those black votes for Jimmy Carter—nearly six million—have been worth in that event?

Besides, since Senator John F. Kennedy defended the Electoral College in the 1950's on the ground that it increased the importance of minority voting, more sophisticated statistical studies have been made possible by computer techniques and game theory. They show as conclusively as statistics ever do that blacks actually are disadvantaged by the Electoral College and that suburbanites—who are mostly white—benefit most from electoral voting.

Lawrence D. Longley of Lawrence University has shown, for example, that only the six largest states are given added voting power by the Electoral College, with the others suffering from it; a California resident, for example, had 2,546 times as much potential for determining the outcome of the Carter-Ford race as a citizen of the most disadvantaged Electoral unit, the District of Columbia.

But only 37.1 percent of the black population lives in those six largest states. On the other hand, states where the percentage of blacks is higher than their percentage of the national population are generally Southern states where voters are most disadvantaged by electoral voting.

Working from such figures, Mr. Longley and a colleague, John H. Yunker, calculate that a black voter on the average has 2.4 percent *less* voting power in the Electoral College than the average American voter. And in a separate, unpublished study, Douglas H. Blair of the University of Pennsylvania also concluded that suburban whites consistently had the most weight in electoral voting, while blacks, were among the most disadvantaged groups.

The outlook now is for Senate and House debate on the Electoral College amendment to be delayed until next year, when there will be time to outlast the expected filibuster. Numerous other arguments will be made against the change; but as for black voting strength, much evidence appears to confound the old assumption. As Professor Blair put it in a letter to me, abolition of the Electoral College actually "would largely benefit those social groups now relatively deprived of both political and economic power in American society."

VIOLATION OF HUMAN RIGHTS IN LITHUANIA

Mr. HEINZ. Mr. President, in August, Soviet authorities arrested Lithuanian human rights activists, Viktoras Petkus and Antanas Terleckas in Vilnius, the Capital of Lithuania. Petkus is a member of a Lithuanian group to promote observance of the Helsinki agreements of the U.S.S.R. The aim of the group is to promote the observance and fulfillment of the humanitarian articles of the Final Act of the Conference on Security and Cooperation in Europe. The group concentrates on those articles which relate to human rights and basic freedoms, including freedom of thought, conscience, religion, and belief. It also seeks to obtain adherence to the agreement's protecting free contact between people in cases such as the reunification of families, meetings with relatives, residence in other countries. Terleckas is a longtime dissident—having been already imprisoned three times—the first time when he was only 17 for supposed participation in an anti-Soviet partisan group by the KGB.

In the spirit of the Helsinki accord, we all must vigorously protect such a gross injustice. This incident is just one in a long history of continuing disregard for human rights by the Soviets. The arrest of Viktoras Petkus and Antanas Terleckas is illustrative of the tragedy of the suppression of freedom of Lithuanians by the Soviet authorities.

Despite continued oppression, the dream of freedom still lives on in the hearts and minds of Lithuanians now living under Soviet rule, and in the hearts and minds of the over 1 million people of Lithuanian heritage now living in the United States. This constant reminder of the sustained struggle for freedom in Lithuania serves as an inspiration for all people.

We cannot remain silent—to do so would be to ignore our obligation to the Helsinki accords and to those struggling toward the realization of the dream of freedom. Because the arrest of Petkus and Terleckas is a violation of the Helsinki accord, we must protest this action by the Soviet Government.

LABOR REFORM ACT OF 1977

Mr. HATCH. Mr. President, at this moment the House is engaged in debating the Labor Reform Act of 1977 under a very restrictive rule which prohibits amendments to any section of the Taft-Hartley Act not included within the scope of H.R. 8410. It is indeed unfortunate that the rule as adopted will foreclose the opportunity to offer many of the provisions contained in H.R. 8310 and its counterpart S. 1855, the Employee Bill of Rights, which I and Senator TOWER have introduced in the Senate.

For the information of my colleagues, the Labor Subcommittee of the Human Resources Committee has commenced hearings on labor law reform and the hearing process will be continuing after the Senate recesses this session.

The entire subject of labor reform encompasses many technical issues which only labor lawyers seem to understand. One thing comes through loud and clear in our committee deliberations—labor reform is a subject which requires extensive education and study to really determine the impact of the changes proposed by S. 1883, the Labor Reform Act of 1977.

As evidence of what I am saying I refer my colleagues to the first editorial published in the Chicago Tribune on the labor reform bill. The tenor of that article was to support certain of the proposed changes called for in S. 1883 because they struck the editorial staff as fair. The text of that article will appear following the conclusion of my remarks.

A recent and more telling editorial dated October 4, 1977, clarifies the paper's position and announces support

for many of the provisions of my bill and opposition to many of the reprehensible features of S. 1883. A quote from the editorial that I believe summarizes the heart of the paper's apparent "about-face" is:

If in some instances unions deserve some protection against employer power, union members themselevs clearly deserve protection from the power of union leadership—a notion that lies at the very heart of industrial democracy.

The object lesson is, Mr. President, that with adequate study and reflection, people of reasonable objectivity can filter out what is, or is not, in the public interest. I trust this will be a subject where we can learn a lesson from the Chicago Tribune.

I ask unanimous consent that the text of the two Chicago Tribune editorials be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

IN FAIRNESS TO LABOR

As powerful as organized labor has become, it still has some problems when, in striving for collective bargaining, it bumps heads with employers. The National Labor Relations Board, for example, has no time limit to force an election; this enables some employers to stall for up to a year with legal challenges to the validity of employe authorization cards.

The White House is expected to support compromise legislation to be introduced by Sen. Harrison Williams and Rep. Frank Thompson, both pro-labor Democrats from New Jersey. One provision would require such union-representation elections in small, uncontested cases within 15 days. For large, contested cases, the NLRB would have to act within 75 days. That would seem to give either side reasonable time to exercise its rights adequately. But because legitimate disputes in this area are complex, a limit of anything less than 2½ months would be unfair.

Another organizing problem for labor is that employers can fire key workers for engaging in union activities and thus intimidate other employes. Although such firings are illegal, the severest penalty now is likely to be the payment of back wages. Labor originally wished to triple the penalty. But that would probably produce a flurry of triple-pay suits regardless of merit.

It would also unduly inhibit employers from firing incompetent workers who might claim that they were being fired for union activism. Even the bill's compromise proposal to double back wages would be inhibiting, but to a lesser degree, while striking what seems to us as a fair balance between the rights of employers and employes.

The bill's proposal to help speed up cases by increasing NLRB membership to seven from its current five should benefit both sides, which is more than we can say for the notion of having "routine" appeals from NLRB hearing officers' ruling decided by only two board members. Appellants may not consider their cases any more routine than persons who appeal civil or criminal disputes to the Supreme Court, where having two justices out of nine decide would be more like legal lottery than constitutional review.

Automatic enforcement of NLRB decisions unless an appeal is filed within 30 days of an order, as proposed by the bill, also seems to be a way to expedite decisions without unduly restricting the ability of either side to respond.

More dangerous is the proposal to deny U.S. government contracts to employers who "willfully" violate labor laws.

This would do more than redressing a possibly legitimate grievance. It would tend to discourage employers from lifting a finger against intolerable employe actions for fear of losing the case before the NLRB and the courts and therefore of losing federal contracts upon which the livelihood of employers and workers alike may depend. That would represent the kind of unhealthy shift in balance between employers and employes that has got both sides into trouble in the sagging economies of other industrial nations.

We support certain of these proposed changes because they strike us as fair. If there has been an agreement whereby the Carter administration will support the Williams-Thompson proposals in exchange for labor's abandonment of its more obnoxious proposals such as prohibiting state right-to-work laws, good enough; many of these proposals remain what they always have been—monopolistic special interest schemes that penalize the average worker as well as the consumer.

THE LABOR REFORM BILL

Since expressing some sympathy two months ago for the labor law reforms proposed by the unions and endorsed by the administration, we have been overwhelmed by the affection of new-found friends in organized labor.

The truth is that our editorial "In fairness to labor" was considerably less than a profession of undying and unconditional support for the bill now before the House Rules Committee. So before this affair gets out of hand, and before the committee sends the bill to the House floor in a form which makes amendments difficult, as the AFL-CIO would like, let us repeat and emphasize what it is that we support about the bill and what we oppose.

What we support is the effort to make sure that our labor laws succeed in their proper purpose, namely to enable employes to form or join a union when it is clear that a majority want to do so, and to make sure that the employer deals with that union in good faith and without undue delay.

There have been too many instances in which organizing efforts have become bogged down in the obstructionist tactics of employers and their lawyers. The proposed bill, H.R. 8410, would generally require that union elections be held within 15 days, 45 days, or 75 days of the receipt of a petition by the National Labor Relations Board, depending on the nature of the case and the decision of the NLRB. For contested cases, we said in our earlier editorial and repeat here, 75 days is a fair maximum. Fifteen days is too short a period to enable both sides to present their respective cases—which is in itself a professed goal of the bill.

One unacceptable section would temporarily deny U.S. government contracts to employers who "willfully" violate labor laws. As we've said before, that would do more than redress a possibly legitimate grievance. It would, in fact, discourage employers from legitimately moving against intolerable employe actions for fear of losing the case before the National Labor Relations Board and the courts. The resultant loss of federal contracts, upon which the livelihood of employers and employes alike may depend, would mean that a punitive element had been introduced into U.S. labor law never intended to be there. Established unions, often already too powerful, would have their powers still further enhanced.

Another pseudo-reform that should be deleted from H.R. 8410 would, in effect, empower the NLRB to write a labor-management contract spelling out what the parties would have agreed to if they had completed negotiations. The idea is to assure financial relief for employes victimized by an employer's refusal to bargain. Such employer delaying tactics are more properly addressed by the traditional weapon that keeps the issue between the contracting parties and doesn't invite in Big Brother. That weapon is the strike.

Another employer-opposed provision would double the allowable penalty against employers who fire key workers for engaging in union activities. The severest penalty now is likely to be merely the payment of back wages. Labor originally wished to triple that penalty but accepted doubling it as a compromise. This strikes us as fair to both sides.

H.R. 8410 has, nevertheless, enough major imperfections to warrant its death in the House unless they are amended out of it. Among the measures that deserve inclusion, furthermore, are some of those in H.R. 8310, sponsored by Rep. John Erlenborn [R., Ill.] and in a similar Senate bill. These would guarantee secret-ballot union elections, limiting the fines unions themselves can levy against their members, and the judicial enforcement of no-strike clauses. If in some instances unions deserve some protection against employer power, union members themselves clearly deserve protection from the power of union leadership—a notion that lies at the very heart of industrial democracy.

NEW McCLELLAN COMMITTEE IS NEEDED

Mr. GRIFFIN. Mr. President, for several years, I have urged my Senate colleagues to reestablish a select committee to investigate abuses in the labor-management field, similar to the McClellan Committee of the 1950's.

Unfortunately, the Senate has taken no action on my proposal, (S. Res. 89) but the instances of corruption and abuse continue to increase.

Recently an article appeared on the front page of the September 14 issue of the Wall Street Journal which poignantly illustrates the situation. In that article Jonathan Kwitny and James Carberry report that, aided by some labor unions, the Mob has lifted millions of dollars from New Jersey banks. As a result of these developments four banks have folded.

I ask unanimous consent that the Wall Street Journal article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AIDED BY SOME UNIONS, THE MOB LIFTS MILLIONS AT NEW JERSEY BANKS

(By Jonathan Kwitny and James Carberry)

Back in the 1960s, Mafia big shots like Little Pussy Russo and Bayonne Joe Zicarelli used the influence of their allies in politics to help get millions of dollars in loans from major New Jersey banks to finance their shady enterprises and freewheeling life styles.

Now, after a series of anti-corruption prosecutions in the state during the 1970s, many of those political allies are out of office. So the Mob has come up with a new method for breaking the banks in New Jersey, And it has been working like the key to the mint.

The new method exploits the continuing power of one group of Mafia allies whom the anti-corruption prosecutions didn't touch: leaders of at least two big unions in the state, the Teamsters and the Retail Store Employees. It also exploits a state banking law passed in 1969. The legislation made it more profitable to start a bank, and thus

it has produced a plethora of new, small banks whose officers are drooling for a few heavy depositors who can launch them into the big time.

What happens is this: A union leader approaches a fledgling banker and offers to deposit hundreds of thousand of union dollars; the money may come from pension or severance funds, or the union treasury, or both, the interest rates are negotiable and secret. In return—sometimes by tacit understanding, sometimes even by a blatant formal agreement—the banker promises, apparently illegally, to approve loans for any "customers" recommended by the union leader. It is suspected that there is often some kickback money, too, to sweeten the deal for the bank executive—especially after he catches on to what's really happening and to the risks that he himself is running.

EXTENT OF LOSSES

Under such agreements, at least $10 million, and maybe much more since about 1973, has been lent to, and not paid back by, a parade of characters whose names read like the index to the Valachi hearings on organized crime. At least four banks have folded because of these dealings (three were taken over by larger banks and a fourth was liquidated), and there are indications of possible trouble at others.

The "borrowers" have included loan sharks, alleged murderers and ex-cons of all types.

One borrower, a reputed Mafiosi named Patrick Pizuto, a twice-convicted armed robber and a suspect in a gangland murder, got his loan from State Bank of Chatham (now closed) while serving a seven-to-10-year sentence in Trenton State Prison. He came into the bank and applied for the loan one day while out on a work-release program. Then, so he could spend the money he borrowed, he commuted his own prison sentence. He achieved this feat by having an accomplice slip him a blank form of the kind used in appellate-court decisions; then he forged three judges' names to it and mailed the "court order" for his release to the warden, who promptly released him. He picked up his loan money the same day.

Mr. Pizuto now is back behind bars, but his return to prison is just one of the reasons his loan is still outstanding. He "borrowed" only $2,500. Most of his criminal colleagues each have gotten some $30,000 to $40,000 (that tends to be the limit on an individual bank officer's authority to approve loans to one customer).

PHONY BUSINESS NAMES

Some hoods have incorporated themselves under a variety of phony business names so they could go back for numerous $30,000 to $40,000 loans. One set of loans from State Bank of Manville (now closed) reached about $750,000, all benefiting a firm run by Robert Gooding, a convicted extortionist and sometime partner of feared Mafia enforcer Anthony "Tony Tumac" Acceturo.

Some series of loans seem to have been arranged by a single loan shark or bookie, who appears to have been authorized—presumably in exchange for a cut of the take—to bring around his recalcitrant clients to borrow cash to pay their debts to him. Then the customers who were welching on the loan shark can welch on the bank instead.

The U.S. attorney's office and the Federal Bureau of Investigation in Newark have been investigating this situation for more than a year. They have achieved an impressive body count—45 persons have been indicted over allegedly fraudulent loans from seven banks—but the lawmen acknowledge they are a long way from winning the war. The investigation is continuing, and so, evidently, are the bank losses.

NOTING THE PATTERN

A pattern in the bank failures and criminal indictments regarding bank fraud in the past 18 months has been noted by PROD Inc., a Washington-based group of dissident Teamsters that has long been trying to clean up the Teamsters union. Earlier this year PROD prepared a long, detailed report alleging that the bank looting was the result of a carefully orchestrated plot being carried out by the old Genovese Mafia family. The report concluded that "labor racketeers . . . have taken over the loan policies of entire banks."

PROD submitted the report to the House Ways and Means Committee with a request for an investigation; the committee is involved in supervising enforcement of the 1974 pension-fund regulation law. Several weeks ago, without authorization from PROD, a committee staff member sent the report to several newspapers, including this one. The Journal began its own investigation, relying on thousands of pages of documents and testimony in civil and criminal court cases, other official state records and numerous interviews. While there appear to have been a few factual errors in the report sent out by the Ways and Means Committee aide, independent evidence overwhelmingly supports the gist of it.

Meanwhile, of the 45 persons indicted so far in federal court, 16 have pleaded guilty, eight have had charges against them dismissed, and 21 are awaiting trial. One, Robert Prodan, former president of the new defunct Bank of Bloomfield, underwent a nine-week trial earlier this year; the jury was hung, and he is to be retried this fall. In addition, Mr. Gooding, who isn't one of the 45, is under indictment in state court on charges that he bilked an eighth bank.

Punishment has been light. Of 10 persons who have been sentenced, only four have received jail terms—the longest being for one year.

But the Mafia may be imposing its own sentences on figures in the investigation who have cooperated with the government, welched, or otherwise gotten out of line. Two borrowers have been shot to death—one outside his produce store, the other in a Manhattan parking lot in what seem like classic Mob hits. One victim, according to acquaintances, was murdered hours after leaving the FBI office in Newark, where it is believed he opened up about his loan-shark friends.

One bank officer who was giving information to the government while under indictment in the case involving Mr. Gooding died in the crash of a small private plane he was flying—a crash that law-enforcement officers term suspicious. The death of a second bank officer who was involved was ruled a suicide.

And the FBI reportedly has a tape recording of a conversation in which the former president of State Bank of Chatham was told by a prominent lawyer who is connected both politically and to the Teamsters, "We're gonna lay you out alongside Hoffa." The recipient of the alleged threat, Alexander Smith, has pleaded guilty to conspiracy and was given three years' probation.

TWO UNIONS CITED

One union that deposited hundreds of thousands of dollars in various banks just before they started lending to mobsters is Local 1262 of the Retail Store Employees Union, based in Clifton, N.J. The local was put in trusteeship by its international in 1958 and again in 1967 because of alleged corruption among its leaders. Frank Rando, longtime kingpin of the local, pleaded guilty Jan. 11 to having an illegal deposits-for-loans deal with Mr. Smith at State Bank of Chatham. He got three years' probation and was fined $2,500. The union says he no longer is connected with it.

The other union whose money most frequently has gone into banks at about the time mobsters have taken money out is Local 945 of the International Brotherhood of Teamsters; this large union covers the New Jersey garbage-collection industry, in which the Mafia has long been involved. The key figure in the local is Ernest Palmeri, whose title is business agent—and who comes from a prominent Mafia family.

Like Local 1262, Local 945 was put into trusteeship by its international in the late 1950s because of a corruption scandal. To clean up the local, Teamster overlords sent in outside leadership: the notorious Mafia boss Anthony "Tony Pro" Provenzano. When Mr. Provenzano had the local running to his liking, he turned it over to the current leadership.

Disclosure statements of total bank balances and total interest income show that both Local 1262 and Local 945 have kept hundreds of thousands of dollars in low-interest or non-interest-bearing accounts. Disclosure of the terms of specific accounts isn't required.

DENIES KNOWING OF LOANS

Mr. Palmeri hasn't been accused of a crime in connection with his union's bank deposits. In a brief telephone interview, he said such matters were handled by the local's treasurer, not by him, although other people say Mr. Palmeri personally set up many deals. "I know nothing at all about loans given out to unions," he said in the interview. "I don't want to talk to you or anybody else about it. It's a crock of bull."

Another man whose name pops up prominently in the scandal, and who hasn't been accused of any crime, is George Franconero, former law partner of New Jersey Gov. Brendan Byrne. Mr. Franconero is close to Mr. Palmeri; according to the New Jersey Alcoholic Beverage Commission, they shared hidden ownership of a bar and restaurant in Bergen County and improperly employed an ex-con to run it.

Mr. Franconero, according to uncontroverted testimony at Mr. Prodan's trial, was attorney for a purported leasing corporation that arranged for phony documents to be used as collateral in a series of fraudulent loans at Bank of Bloomfield. The documents purported to show that industrial equipment that really didn't exist was delivered to companies set up by racketeers to receive loans to buy the nonexistent equipment. By this method, mobsters and alleged mobsters contributed to the apparent loss of some $4.7 million by the bank in bad loans.

Mr. Franconero also was attorney for a title company that, according to Mr. Smith, was used to channel kickbacks from Bank of Chatham to Mr. Rando of the Retail Employees Union. Allegedly, the company billed the bank for services the company didn't perform. Mr. Franconero also helped introduce banks to some of the bad borrowers.

One client of the law firm with which Messrs. Byrne and Franconero were connected in the early 1970s was mobster Thomas "Timmy Murphy" Pecora. The firm represented Mr. Pecora extensively in civil matters and successfully fought to get him freed from jail on reduced bail when he was arrested on gambling charges. Mr. Pecora's brother, Joseph, runs Teamster Local 863, also in New Jersey, whose pension fund had six-figure deposits in State Bank of Chatham just before the bank went under because of bad loans in 1975.

Mr. Franconero refers all questions now to his lawyer, Martin Greenberg, another former member of the Byrne law firm. Mr.

Greenberg, who is a Democratic state senator, says Mr. Franconero won't discuss the bank situation because he considers himself the "target" of a current federal investigation.

The question of whether Mr. Franconero will be indicted has added political overtones to the situation, because under the pressure of prominent Democrats in the state, President Carter is replacing the U.S. attorney, Jonathan Goldstein, with Robert Del Tufo, a Byrne appointee in the Democratic state administration. Several persons involved in the investigation have expressed fear that the switch in prosecutors may affect the fate of Mr. Franconero and others.

EASY TARGETS

What makes a bank officer go on approving crooked loans even after he realizes they are costing his bank more than it can make from union deposits? The presidents of some banks involved are easy targets for bribe proposals because their own salaries are surprisingly low—often under $30,000 a year, even though they are empowered to lend out more than that with a stroke of their pen.

Ralph Stein, a business associate of some Mafia loan sharks, has used many kinds of influence. He has been sentenced to jail for helping wreck Springfield State Bank last year by extracting more than $300,000 in phony loans. The Teamsters put several hundred thousand dollars into the Springfield bank, and Mr. Stein also bribed its president, Donald Spears, who has pleaded guilty and awaits sentencing.

Mr. Stein used blackmail to loot another bank, according to a knowledgeable banking-association official. Visiting a difficult loan officer, Mr. Stein is said to have casually walked off with the officer's briefcase. Inside he found love letters indicating that the loan officer, who was married, was having an affair with a woman employe of the bank, who also was married. The briefcase was returned without the love letters, and the loan officer suddenly became cooperative. The situation came to light, the source says, when the woman spoke up in a successful effort to forestall prosecution of the loan officer.

CASES OF TWO BANKS

The individual shady loans on record in the current scandal are numerous. What follows are brief accounts of how only two of the hardest-hit banks were moved in on and what happened to them.

Bank of Bloomfield—Soon after Robert Prodan arrived in 1973 to succeed the retiring president, he went looking for big depositors and pulled in at least $1 million from various Teamster groups, including Mr. Palmeri's Local 945. Then dozens of hoods—big-time and small-time, from New England to Michigan to Florida—signed up for deals that drove the bank into receivership by December 1975.

Mr. Prodan had met Arnold Daner—a key figure in these developments—in 1967 when both worked as young accountants in a small commercial finance concern. When Mr. Prodan took up a career with large banks in the New York area and Mr. Daner founded an import firm, they remained friends. Mr. Prodan invested heavily in Mr. Daner's business, which failed.

Mr. Daner moved to Florida in 1972 and started a company that financed leases (similar to financing installment purchases) of industrial equipment. He says Mr. Prodan stayed on as his partner; Mr. Prodan says he considered that but declined.

In 1973, a loan customer of Mr. Prodan's at Franklin State Bank in Newark, who also happened to be chairman of the much smaller Bank of Bloomfield, invited Mr. Prodan to fill the presidency of the Bloomfield bank. Mr. Prodan accepted, and, at about that time, Mr. Daner moved the leasing business to New Jersey, too.

CONSPIRACY CHARGED

Mr. Daner and the government say there was a conspiracy among him, Mr. Prodan and their Mafia buddies to loot the Bloomfield bank. Mr. Daner has pleaded guilty and has been relocated by the government for his protection. Mr. Prodan denies he was in a conspiracy or had any Mafia buddies—at least until Mr. Daner introduced them to him. The jurors at Mr. Prodan's trial this spring couldn't decide which man to believe; a new trial is set next month.

But aside from the questions of whether Mr. Prodan was in on the conspiracy and whether he got the tens of thousands of dollars in kickbacks that Mr. Daner and the government say he got, other facts are largely beyond dispute.

The hoods lined up at the leasing firm for equipment leases totaling $6 million. The leases then were discounted to Bank of Bloomfield, which shelled out $4.7 million in cash for the right to collect on the leases.

Millions of dollars of equipment supposedly being leased didn't exist. Equipment that did exist was inflated in value. In December 1975, the Federal Deposit Insurance Corporation took over the bank and is still winding up its affairs.

Much of the phony equipment was in the garbage-collection, disposal and recycling field. The private cartage business has long been infiltrated by mobsters, so there were plenty of Mafia-owned garbage firms ready to file phony leases. Moreover, Mr. Daner had lined up a garbage-equipment manufacturer in Florida to give him documents in blank, which he could fill in; thus he could make it appear that a piece of equipment was delivered to a company when actually it wasn't.

MOBSTERS MOVE IN

Two mobsters, Dominick Troiano and Charles Musillo, moved in as Mr. Daner's partners. Mr. Musillo, an ex-con, and his 21-year-old son, Michael, used vast sums taken in from leases on nonexistent garbage equipment to finance a loan-shark operation; they have pleaded guilty and await sentencing. Mr. Troiano, who also pleaded guilty and awaits sentencing, helped bring in customers, including his relatives, for the "leases."

Among the many Bank of Bloomfield lease patrons familiar to law-enforcement authorities are Thomas Milo, a Westchester County, N.Y., garbage carter whose father, Sabato, and uncle, Thomas Sr., were cited in the Valachi hearings as members of the Genovese Mafia family specializing in gambling, shylocking and narcotics; Anthony "Buckalo" Ferro, identified in the hearings as a Genovese soldier in gambling and shylocking; convicted felon Joseph Scappatone and his son, William "Skippy" Scappatone (who used $50,000 in bank funds to pay loan sharks, according to Mr. Daner); and a Detroit garbage firm, Central Sanitation Co., founded by Raffael "Jimmy Q" Quasarano and Dominick "Sparky" Corrado, whose respective narcotics and labor racketeering deals have been described in congressional testimony. (Thomas Milo says that he is paying back two loans and that papers for a third loan were forged and he never received the money.)

According to Mr. Daner's trial testimony, not disputed in Mr. Prodan's testimony, Mr. Palmeri had a part in some of these leases, including the one to Central Sanitation for $85,000. When Central Sanitation failed to make initial payments in the summer of 1975, outside directors became suspicious, and the entire scheme was threatened. Mr. Daner testified that Mr. Prodan brought him to Mr. Palmeri in a restaurant and "told me that Ernie was a very powerful man in New Jersey, told me that nothing goes on in the state in the garbage business without his blessing . . . told me that he (Mr. Palmeri) would be able to collect the money if he had to break the guy's head with a pipe."

IN BANKRUPTCY PROCEEDINGS

Still, the Central Sanitation lease wasn't paid, and the Detroit firm now is in bankruptcy proceedings. Many other leases were paid in part, though; some $500,000 in proceeds from the phony leases was used to keep up the payments to the bank on other leases, so the operation would seem to be working.

The Daner leasing company also financed $150,000 in equipment—apparently genuine—for the restaurant in which Messrs. Palmeri and Franconero are said to have an interest. Mr. Daner testified that Mr. Franconero, who won't comment, was a lawyer for the leasing firm.

In other Daner testimony not disputed by Mr. Prodan at trial, the two men met for dinner in New York's Little Italy with famed mobster Matthew "Matty the Horse" Ianello and other mobsters, including Mr. Musillo, to discuss forming a garbage company in Florida with New Jersey bank money. Mr. Prodan acknowledged cosigning a $20,000 loan at another New Jersey bank to help finance the garbage company. He said Mr. Musillo was involved in the firm, though he didn't mention Mr. Ianello.

Mr. Prodan's lawyer says that although the allegations weren't rebutted at trial, Mr. Prodan denies ever meeting Mr. Ianello or ever saying that Mr. Palmeri would hit someone with a pipe.

Mr. Daner also told how $25,000 in Bank of Bloomfield funds went indirectly, through loan sharks, to Carmine Galente, who some law-enforcement officers think is the most powerful Mafiosi in the country.

State bank of Chatham: Shortly after the bank opened on March 27, 1972, Mr. Smith, its president, was introduced to Mr. Rando, the Retail Employees official, by George Fiore, a bank director. Mr. Smith, who previously was a senior vice president at National Bank of North America in Manhattan, says he was delighted to learn over lunch that not only had Mr. Rando purchased a certificate of deposit at the Chatham bank, but also that he was prepared to line up prospective borrowers.

That same day, Mr. Smith recalls, he accompanied Mr. Rando to a jewelry store run by Anthony Cilli, a friend of Mr. Rando's. Mr. Cilli last November pleaded guilty to conspiracy in connection with the use of an estimated $100,000 of Chatham bank loans for loan-sharking. But at the time, Mr. Smith says, "I didn't think he was a Mafia type. He didn't look like a hardened person."

Subsequently, the bank agreed to make loans to Mr. Rando's friends in return for deposits of union funds in the bank. Shortly thereafter, Mr. Smith says, the union's deposits jumped to around $360,000 from $120,000. Mr. Smith says he made the rounds of other unions, trying to drum up deposits. His entree to the Teamsters local run by Mr. Palmeri was helped, he adds, by his acquaintance with Mr. Palmeri's sister. Ultimately, the union local became a major depositor at the Chatham bank. Money also poured in from other unions.

And Mr. Rando's friends started coming round for loans. One was Henry Rudnitsky, a produce-market owner, who is believed to have used more than $100,000 of bank borrowings to pay off debts to organized-crime figures. Mr. Rudnitsky was shot to death two years ago in what looked like a mob "hit" shortly after he had begun to cooperate with law-enforcement officials. Now the bank is trying to collect from some of his friends who guaranteed his notes.

BANK BEING LIQUIDATED

In 1975, Mr. Smith quit his $34,000-a-year Chatham bank presidency to become presi-

dent of another New Jersey bank, but he resigned that post when he learned that federal authorities had begun investigating his Chatham bank dealings. Last year, as a result of the Chatham bank's problem loans, another local bank, Chatham Trust Co., began liquidating State Bank of Chatham with FDIC support. Chatham Trust assumed the deposits and those loans of Bank of Chatham that it thinks can be worked out, says Frank Stetson, Chatham Trust's president. Attorneys for Bank of Chatham are trying to recover the bank's investments in the remaining loans.

Mr. Smith last November pleaded guilty to a federal indictment for conspiracy and was placed on three years' probation for his role in Bank of Chatham's demise. And Mr. Smith, Mr. Franconero and George Piccola, a business partner of Mr. Franconero, recently individually settled a lawsuit brought in a New Jersey state court by Bank of Chatham's attorneys. The suit accused them, among other things, of conspiring to defraud the bank by having it lend money beyond the amount permitted by law and by making loans that were financially unsound, inadequately secured and in disregard of the bank's interests.

The settlement requires Mr. Smith to pay the bank more than $1 million. How he will come up with the cash is uncertain, since he is currently unemployed and says he has exhausted his financial resources in attorneys' fees and other expenses.

In an interview, Mr. Smith depicts himself as a somewhat naive executive taken in by others. He says he was motivated simply by a desire to increase the loan volume and therefore the profits of a bank in which he, at the time, had a $45,000 equity interest. And, he adds, he didn't get any kickbacks from borrowers.

But in an affidavit filed as part of his settlement, Mr. Smith admits that he concealed from the bank's directors that he approved loans solely on the recommendations of the Retail Clerks' Mr. Rando and others to borrowers lacking good credit records. And, he concedes that "some of the loans were for illegal purposes."

Without admitting any wrongdoing, Mr. Franconero and Mr. Piccola, whose own business venture or those of their acquaintances obtained a number of Bank of Chatham loans, also settled with the bank. The terms of Mr. Franconero's settlement haven't been disclosed publicly, but Mr. Piccola has agreed to repay the bank nearly $129,000. Mr. Franconero declined to be interviewed, and Mr. Piccola couldn't be reached for comment; but some of their relationship with the bank have come to light in depositions filed in Mr. Piccola's bankruptcy proceedings in a federal court.

According to Mr. Franconero's deposition, the bank lent him $30,000 directly and also channeled another $13,000 to him through a shell corporation owned by Mr. Piccola. Mr. Franconero says Mr. Smith wanted the $13,000 loan made through a corporation so the bank could get a higher interest rate than that permitted on personal loans. But a bank attorney contends in the bankruptcy proceedings that loans were made to this and other shell corporations owned by Messrs. Franconero and Piccola to conceal "an illegal concentration of credit" in their hands in violation of state banking laws.

JUSTICE DENIED WILMINGTON 10

Mr. BAYH. Mr. President, the struggle of the Wilmington 10 has now evolved into a test of our judicial system. The question of the guilt or innocence of Ben Chavis and the other nine defendants has received national as well as international attention. In essence, our legal system is once again on trial. Because the final adjudication of this case essentially represents a test as to how far we have progressed since the Scottsboro case, I ask unanimous consent that Mr. Vernon Jordan's recent article concerning this trial be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUSTICE DENIED WILMINGTON 10

(By Vernon E. Jordan, Jr.)

While the United States government maintains pressure on foreign countries that violate human rights and imprison people on politically-inspired, trumped-up charges, the Wilmington 10 are still behind bars.

Their continued presence in North Carolina's jails makes a mockery of our human rights pretensions. Our country has been forced onto the defensive by penny ante dictators who justify their own repressions by pointing to the fact that the Wilmington 10 have been sentenced to nearly 300 years' imprisonment under circumstances that smell of rigged trials and racial vengeance.

The story of the Wilmington 10 goes back to 1970, when court-ordered desegregation of New Hanover County's school system led to escalating racial tensions generated by diehards fighting the entrance of blacks into all-white schools.

The mounting troubles led to black boycotts and demonstrations and culminated in a full-scale riot in Wilmington in which two people died and millions of dollars of property was damaged. In March, 1972, about a year after the riot, the police arrested a number of people, including Reverend Benjamin Chavis, a civil rights worker sent to the area at the request of local blacks by the Commission for Racial Justice of the United Church of Christ.

Reverend Chavis came as a peacemaker, trying to cool a potentially dangerous situation, but local segregationists tagged him a troublemaker and decided to get him. Chavis and his co-defendants were charged with burning a store and conspiring to assault officers during the riots.

Their trial was shot full of errors—defense lawyers appealed on the basis of some 2,800 trial errors that were found. Some were quite important—errors in the jury selection process that resulted in a racially-unbalanced jury, cover-ups of evidence, hiding facts from both defense and jurors, and concealing favors to prosecution witnesses.

The jurors never knew that key witnesses were under criminal charges themselves, a major point since knowledge of that fact would have led jurors to consider whether they may be perjuring themselves to save their own necks.

After the conviction of the Wilmington 10, North Carolina courts knocked down their appeals. But in the meantime the prosecution's star witnesses came forward with stories about how their testimonies had been bought.

One key witness admitted he lied. He said the prosecutors tricked him into giving false testimony. Another witness, who was only 13 at the time, admits he lied too, and had been promised a bike by the prosecutor. Still another, also a teenager at the time, said he was pressured into lying and had been coached by the prosecution.

So the original trial stands revealed as a farce that violated the constitutional rights of Chavis and his co-defendants. Appeals in the state courts have proven fruitless, so now there are two basic ways in which the wrongs may be redressed.

One way is for North Carolina's governor to use his powers to free the defendants. The injustice of wrongful convictions would stand but at least the revolting state of continued imprisonment would be ended.

Another is for the federal courts to overturn the convictions. Appeals have been filed, but the federal government should intervene in the process by revealing the results of its investigation of the trial and filing a brief to overturn the convictions.

The Wilmington 10 case, along with the case of the Dawson 5 and similar apparent miscarriages of justice reveal the stain of the past on today's South. All the rhetoric about a New South will sound hollow so long as the region's jails house people railroaded for political and racial reasons.

This is not just down-home affair; it's something that concerns national integrity and the international drive for human rights.

PANAMA CANAL TREATIES

Mr. PERCY. Mr. President, our distinguished colleague from Virginia (Mr. SCOTT) has made a detailed study of the proposed Panama Canal Treaties and indicated a number of concerns with regard to various provisions contained in them. Senator SCOTT testified today before our Committee on Foreign Relation and, in light of his well-researched presentation, and also in viewing the fact that he testified in the afternoon when some of our colleagues had schedule conflicts, I ask unanimous consent that the statement made by Senator SCOTT be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR WILLIAM L. SCOTT

Mr. Chairman, I appreciate this opportunity to appear before the Foreign Relations Committee and to express my personal views on the important matter now under consideration. I am aware that the administration in urging ratification has stressed the long period of negotiations under four presidents, emphasized the support of Latin American countries and the need to yield to world opinion to relinquish the Canal Zone to Panama. However, in this country sovereignty resides in the people and not the president or the officials who negotiated the proposed treaties. Therefore, it would seem that the will of the people should be reflected in our decision. There is little doubt that the American people are opposed to the ratification of the treaties, and I have great faith in the collective will of the majority. My own mail is roughly 5 percent in favor of the treaties and 95 percent in opposition, and I expect each Senator's mail is quite heavy. So perhaps in the final analysis rather than the White House educating the American people, the President and the Department of State may receive an education in American Government. I would certainly hope that this will prove to be the case.

My views are based not only on mail from constituents. But upon two recent trips to Panama and South American countries, a thorough reading and rereading of the treaties and background information, independent investigations, listening to testimony before the Subcommittee on Separation of Powers of the Senate Judiciary Committee and studies made by the Library of Congress.

There appear to be many objectionable provisions in the canal treaty which should be eliminated or clarified, such as the prohibition against the United States constructing a new canal anywhere within the isthmus without the consent of Panama, and

the doubtful interpretation of "expeditious passage".

However, the beginning of article I of the Panama Canal Treaty, to my mind, is by far the most objectionable feature because it provides for the abrogation of all prior treaties with the phrase, "This treaty terminates and supersedes" the treaties of 1903, 1936, 1955 and "all other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal. . . ."

Under the 1903 treaty we guaranteed the independence of the new country of Panama, paid $10 million and agreed to an annual payment of $250,000 and obtained both title to the canal zone and sovereignty over it. Other actions taken by our government to perfect our title included the purchase of the French canal properties for $40 million; what was tantamount to a quitclaim and recognition of our title from Columbia for the sum of $25 million; and the purchase of private rights from owners and squatters expressly excluded from the 1903 treaty. All this, however, would be vitiated by the first sentence of article I of the present canal treaties.

It is true that under numbered paragraph 2 of article I, the Republic of Panama grants to the United States for the remainder of this century "the rights necessary to regulate the transit of ships through the Panama Canal and to manage, operate, maintain, improve, protect and defend the canal." But we would be managing, operating, maintaining, improving, protecting and defending property belonging to the Republic of Panama rather than American property as the situation is today.

Mr. Chairman, as you know, a valid contract must contain consideration. We speak of something of value flowing from one party to the other, mutuality but in my judgment these treaties are for the benefit of Panama alone. I find no new benefits for the United States.

It does not appear, Mr. Chairman, that there is serious concern within the executive branch of government to the role of the Congress under article IV of the Constitution. As you know, the second paragraph of section 3 of the article provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: . . ."

To determine the proper role of the House under article IV, I requested a study be made by the Congressional Research Service which responded with an excellent and objective legal memorandum dated August 4, 1977, concluding that precedent indicates Congress has exclusive power to dispose of property in the Canal Zone. I ask, Mr. Chairman, to include a copy of this memorandum in the record.

Attorney General Bonaparte, in an opinion dated September 7, 1907 (26 Att'y Gen. 376), stated that sovereignty over the Canal Zone was not an open or doubtful question and applied what he stated was the first rule of construction, "that plain and sensible words should be taken to mean what they say." The Attorney General added: "the omission to use words expressly passing sovereignty was dictated by reasons of public policy, I assume; but whatever the reason the treaty gives the substance of sovereignty, and instead of containing a mere declaration transferring the sovereignty, descends to the particulars 'all the rights, power and authority' that belong to sovereignty, and negatives any such 'sovereign rights, power, or authority' in the former sovereign."

Now, Mr. Chairman, I realize that some of our people in the executive branch are attempting to convey the impression that we do not possess either title or sovereignty but this is contrary to the opinion of Secretary of State Hay in 1904 who stated, "that the grant accomplished by the treaty was a grant of land and sovereign right thereover, and not a mere concession or privilege, is shown by the granting clauses and also by the references to the grant in subsequent clauses of the treaty; . . ." Later he said: "it cannot escape observation that the legislative branch of the government of the Republic of Panama by legislative enactment declared the zone to be 'ceded to the United States,' and dealt with accordingly." And still later he stated: "the United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the canal zone the exclusive jurisdiction to exercise sovereign rights, power and authority." Mr. Chairman, I ask that this entire letter of Secretary Hay be inserted in the RECORD.

The Supreme Court in the case of *Wilson* v. *Shaw*, 204 U.S. 24 (1907), stated that we hold a valid title to the canal zone and compared our title with the then Territory of Alaska. The court added: "It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to this Nation because of the omission of some of the technical terms used in ordinary conveyances of real estate."

Mr. Chairman, I ask that a copy of this unanimous opinion by the Supreme Court also be included in the RECORD.

In 1971, the Fifth Circuit Court of Appeals in *U.S.* v. *Husband R. (Roach)* 453 F. 2d 1054, cert den. 406 U.S. 935 (1972), stated: "The canal zone is an unincorporated territory of the United States." So, Mr. Chairman, the first article of the canal treaty is attempting to transfer United States property and sovereignty over the canal zone.

These are opinions of both cabinet officers and our highest court made near the time we acquired the zone and the exhaustive study of authorities made by the Library of Congress in its paper dated August 4, 1977. The only rationale I know for persons presently holding positions within the executive branch of government to deny that we hold title or sovereign rights in the canal zone is to close ranks in support of a treaty signed by the President.

I wonder if each Senator early in his school experience didn't learn that he United States acquired the canal zone, rid the area of disease, constructed the canal and has operated it under the American flag since the beginning of this century. At a time when world domination is being sought by a form of government entirely different from our own, it appears untenable to give away this vital artery of commerce, to pay Panama for taking it and to commit ourselves to defend it.

This view is shared by Admiral Thomas H. Moorer, chairman of the Joint Chiefs of Staff from 1970 to 1974, who testified before the Senate Subcommittee on Separation of Powers. Toward the end of his testimony on July 22 of this year, Admiral Moorer made these statements: "Surrender of U.S. sovereinty over the canal zone would inevitably lead to the transformation of the entire friendly character of the Caribbean and the Gulf of Mexico. Everything would depend on the attitude of those who held sovereignty and ownership. . . I might say that in military affairs there is no substitute for ownership of the territory and the ability to control or to deny the waters and the airspace."

Of course, Mr. Chairman, Admiral Moorer retired as our number one military officer and is in a position to candidly express his opinion at this time and I believe we can well understand the hesitancy of some active members of our military forces publicly disagreeing with their commander-in-chief. We need only to reflect on General Singlaub being called back from Korea and being reassigned because of a candid statement made by him and the rebuke of General Starry by the Secretary of the Army to realize that active duty officers and even civilian government officials are not entirely free to express opinions contrary to the administration's position.

Before these rebukes, however, on March 11, 1977, during a closed session of the subcommittee on manpower and personnel of the Committee on Armed Services, Admiral Maurice Weisner, presently commander-in-Chief, Pacific, or in other words, the commander of all of our armed forces for one half of the globe, with headquarters in Hawaii, responded to specific questions regarding the importance of the canal to the United States. This testimony is reported at page 2378 of the hearings on military procurement for the fiscal year 1978 and I ask unanimous consent, Mr. Chairman, to include the page in the record. He was asked for his views as to the importance of the Panama Canal; whether there would be any adverse effect on his command if the Panama Canal were not under the control of the United States. Let me quote his response: "I can see adverse effects, Senator Scott. It takes considerable time to move items by sea from the east coast to the Pacific. Without the Panama Canal, you are adding 3 weeks' time in shipping critical items such as ammunition from an east coast port rather than from a west coast port."

Then I asked the admiral if he would see a need for an increase in our naval strength if we did not control the Panama Canal. Admiral Weisner responded: "Yes; we would have to put these critical items being shipped by sea over a greater area." This, of course, is a response of an active duty military commander before the Singlaub affair.

Returning briefly now, Mr. Chairman, to the conclusion of the testimony by Admiral Moorer before the Judiciary Committee, he states, and I quote: "Anvone in this country who thinks that Soviet Russia is not staring down the throat of the Panama Canal is very naive, and I think it says something to note that the Soviets understand the importance of the Panama Canal apparently far more than many in our own country."

On September 8th of this year, retired Admiral John S. McCain, Jr., also testified before our subcommittee on separation of powers and I am quoting this 4-star admiral: "From my combined military experience which includes Europe, Asia, the Pacific, the Caribbean and the United Nations, it is my conviction that U.S. interests are best served by keeping the canal, by retaining undiluted sovereignty over the U.S. Canal Zone." He added, and again I quote: "Finally, I would like to re-emphasize the importance of the June 8, 1977 letter of the four greatly distinguished chiefs of naval operations to the president that was quoted in the testimony of Admiral Moorer. Their conclusions reflect a vast background, including combat experience, and are more pertinent today than ever. Retired military officers are completely free to voice their innermost convictions. Active duty officers have an obligation to support the policies of their commander-in-chief."

I would hope, Mr. Chairman, that this commitee will call more retired military officers in whom you have confidence and who are free of constraints from their commander-in-chief and ask their candid, personal opinions on the dangers of our government parting with title to the canal and the gradual turnover of full control to the republic of Panama.

Mr. Chairman, we sometimes hear that Latin America favors the transfer of title and control of the canal zone from the United States to Panama but I have taken two trips to Latin America this year and have had the opportunity to talk with chief

executives and other principal officials of a number of Latin American countries, with embassy personnel, with intelligence officers, with American citizens, as well as foreign nationals within the countries visited.

In Colombia I learned that because of kinship with an adjoining Latin country, Colombian officials do favor the transfer of the canal but are very much concerned about the contemplated increase in tolls, stating that the only practical way to transfer material from one part of their country to another is through the canal.

Brazilian officials didn't seem to have any real concern regarding the proposed transfer, referring to it as a matter between the United States and Panama. Perhaps this is because Brazil fronts on the eastern coast of the South American continent and is not among the prime users of the canal.

In Argentina, officials indicated that they did not make extensive use of the canal but expressed fear that it might come under Communist control.

Chilean officials were even more concerned of the possibility of Communist influence or control of the canal indicating that 95 percent of their commerce used the canal and that they could not afford an increase in tolls or to have this vital artery subject to direct or indirect control by Communists. Chilean officials indicated that our contemplated action in giving up the canal appeared to be contrary to the best interest of he world community and they would much prefer that we retain complete control of the canal.

In Peru, we again heard that Panama was a neighboring country and because of this they favored the transfer to Panama. However, officials indicated their country would suffer greatly if the tolls were raised as appears to be inevitable if the treaties now under consideration are ratified. Contrary to some suggestions, officials of every South American country visited indicated that there would be no repercussions from their country if the Senate failed to ratify the treaties.

Within the canal zone itself, we heard the strongest opposition and the greatest fear of Communism. American citizens complained of violation of human rights, they spoke of lack of expertise and management ability, of the differences between salaries within the zone and the Republic of Panama. Many indicated that they would not continue to work within the canal zone if it came under the control of Panama.

I inserted a detailed statement of the Panamanian trip in the August 4, 1977 Congressional Record and included a statement by the heads of various civic groups within the Canal Zone. Should any Senator have any doubt about the feeling of American citizens living in the Canal Zone, he might want to refer to this statement. It concludes, and I quote: "for ourselves as U.S. citizens living and working thousands of miles from our homeland, we can say, 'pack us up tomorrow. We're ready to go.' But for the sake of U.S. commerce and the U.S. national interests in general in the western hemisphere we urge you to examine the proposed treaty in minute detail. We urge you to visit here for more than three days, to observe the situation with your own eyes and not to depend solely on briefings by U.S. or Panamanian government officials. The new treaty with Panama will have long-range repercussions that coming generations will have to live with; we urge you not to ratify a new treaty solely because the State Department says that a treaty is the cure-all to problems with Panama. The Russia-Cuba axis and the American electorate are waiting to see which way the treaty goes. A hasty decision on the part of our Congressmen without giving deep and thoughtful study to the question would please the former and infuriate the latter."

Now, Mr. Chairman, on this question of Communist influence, Mr. Charles Conneely, a member of the professional staff of the Armed Services Committee, and myself talked privately in a number of Latin American countries with embassy officials, with military intelligence officers, with CIA officials, with both American citizens and foreign nationals about the possibility of Communist influence. We first visited in Panama and were somewhat skeptical, or thought perhaps Americans living within the zone might tend to exaggerate the question of Communist influence. Yet, the statements they made were verified in private conversations with the American intelligence community in various Latin American countries. In acting upon this treaty we may well be considering not only future control of the Canal Zone but future control of the Caribbean. Therefore, it would seem important enough to the defense of our own country and that of the free world to have military and civilian intelligence officials, both active and retired, to testify under oath in closed sessions regarding Communist influence, within Panama and other nations of Latin America. Time after time we heard the names of leading political figures in Panama identified as Communists and were told that there were strong Communist influences throughout the Panamanian government. I call these statements to the attention of the committee because of their repetition by so many people during our South American visit and suggest that the committee endeavor to ascertain the truthfulness or falsity of these allegations.

I believe the committee and the Senate will want to consider these factors in determining whether to advise and consent to the treaties.

My own opinion, Mr. Chairman, is that these treaties should be defeated. But I would hope that the administration could then be encouraged to negotiate an arrangement for joint control by the United States, Panama and a limited number of Latin American countries but with ownership of the Canal Zone remaining in the United States.

THE MIDDLE EAST

Mr. BROOKE. Mr. President. it is with deep concern that I feel compelled to speak critically of the recent administration initiatives regarding the Middle East. My concern stems not only from my dismay over the content and implications of the recent Soviet-American statement on the Mideast, but also from an abiding distress over the fact that our country continues to be an "uncertain trumpet" in the world. There is grave danger in the apparent tendency of the present administration to make marked departures in U.S. policy without properly consulting with the Congress beforehand. Lacking compatibility of purpose and views between the two branches of the Government, we erode our capacity to protect our interests and fulfill our commitments.

As far as I have been able to determine, no effort was made by the administration to enter into consultations with the Congress in a meaningful way prior to issuing the statement with the Soviet Union. Even if the statement had been nothing more than a bland reiteration of existing policy, such consultation should have taken place. But the joint statement was not such a reiteration of policy. It implies substantive modifications in U.S. efforts to encourage the Middle East negotiations process. It should not have been issued prior to full and extensive discussions with the Congress.

The defects in the statement are many:

First, no mention is made of resolutions 242 and 238, which form the only legal framework for negotiations on a Middle East settlement. A charitable assumption would be that this is an unintentional oversight. A less charitable but perhaps more tenable explanation is that the administration purposely is abandoning the framework for negotiations provided for by these resolutions. If such is the case, the basic unanswered question is "Why?"

Second, for the first time the United States, in a formal declaration, has used the phrase "insuring the legitimate rights of the Palestinian people" as a prerequisite to a settlement. On its face, the term "rights" appears innocent enough. Yet, anyone who has studied the Middle East conflict in any depth will recognize that word is rife with meanings in the Arab world, most if not all of which would be unacceptable as a basis for a settlement. I do not know of any official declaration by any Arab State that has defined exactly what is meant by the "rights" of the Palestinians". Indeed, I believe the most common response of Arab spokesmen when asked about the subject is to state that a definition of "Palestinian rights" is an issue for the Palestinians to decide. In this regard, as far as the PLO is concerned, its definition of such "rights" appears to encompass the "right" to replace the state of Israel with a nonsecular Palestine.

While I do not believe for one moment that the administration accepts that as a "Palestinian right," I do fear that by joining with the Soviet Union in using this loaded word in the Joint Statement, it has substantially compromised the credibilty of its commitment to oppose any solution that would increase the danger to Israel's survival as a Jewish homeland. Again the question—"Why has it done so?"

It should also be noted that the Palestinian view on "rights" includes the option for Palestinian refugees to settle in areas in what is now Israel or to receive compensation for properties lost, not by themselves in many cases, but by parents or relatives. Implicit in the joint statement's reference to "Palestinian rights" is a growing tolerance of this viewpoint. If the administration is receptive to the so-called "right of return," it is accepting the settlement in Israel of possibly 2 to 2½ million Palestinians who, advocating the right of self-determination, would then be in a position to agitate forcefully for a secular Palestine. Does the administration honestly believe that encouragement of such a "dream," indeed a fantasy, contributes to the negotiation process? No Israeli Government could accept or could be expected to accept such a threat to Israel.

There can be no question that compensation for individual Arabs who were the unwitting victims of the turbulence of the birth of Israel is a legitimate subject for negotiations. Similarly, those Jewish inhabitants of Arab lands at the time of upheaval or subsequent to that

time who also have suffered material losses have a just claim for compensation. Yet, in the joint statement, there is no implicit recognition and acceptance of this.

Third, the joint statement makes no reference to the necessity of a peace treaty as a precondition of a just settlement. It calls for the ". . . termination of the state of war and establishment of normal peaceful relations . . .," but offers no indication as to the proper sequence of events in achieving that goal. Past gyrations of the administration on the "timing-sequence" indicates a willingness to pressure Israel to make substantive concessions now regarding territory and "Palestinian rights" in return for vague promises of peace at some unspecified future date. The failure of the joint statement to state specifically that a peace treaty that conforms to the true meaning of that much-abused term will be brought into effect simultaneously with what will be asked of Israel is a further disquieting indication of the administration's willingness to risk the chance for true peace by "cutting corners" to reconvene Geneva regardless of whether or not the proper conditions exist to justify doing so.

Fourth, the joint statement contains no reference to such concepts as "termination of claims of belligerency" or "freedom of navigation of international waterways" for all States in the Middle East.

These concepts would be crucial elements in a settlement that it would be honorable for the United States to give its support to. Does failure to mention them constitute an administration willingness to compromise on these issues?

Fifth, implicit in the joint statement is the assumption that legal borders defining the State of Israel already exist. This simply is not the case. There are armistice lines extending back to the late 1940's. But there are no recognized borders. That is one of the crucial subjects for negotiation. Yet, the administration, in agreeing to the wording of the joint statement, weakens the basis for negotiations on this subject. I can discern no wisdom in or reason for doing so.

Sixth, the joint statement comes dangerously close to defining "security of borders" as meaning the establishment of demilitarized zones, the stationing of U.N. troops or observers and the provision of international guarantees of those borders. While these elements should not be excluded from consideration as possible components of a regimen for "secure borders," they certainly are not sufficient in and of themselves. The United States would never tolerate a security regimen based on such a shaky foundation. Is it any wonder that Israel feels compelled to resist an attempt to impose such an approach on it?

Finally, the joint statement and the manner of its genesis indicate an administration intent to abrogate the 1975 United States-Israel memorandum of agreement. There was no effort on the part of the administration to discuss the subject matter of the joint statement with Israel prior to its issuance. Yet, in the 1975 memorandum the United States and Israel agreed to:

> . . . concerted action to assure that the conference will be conducted in a manner consonant with the . . . declared purpose of the conference.

By no stretch of the imagination can one reasonably argue that the joint statement does not alter the assumption regarding the Geneva Conference that prompted the signing of the 1975 memorandum. Moreover, in the memorandum it was also agreed that—

> . . . [T]he Geneva peace conference will be reconvened at a time coordinated between the United States and Israel.

The joint statement calls for the reconvening of the Conference "not later than December, 1977." There is no evidence that the administration discussed this artificial and precipitous deadline with Israel.

There are other serious deficiencies in the joint statement. But overarching the justifiable concerns regarding the statement's contents is the question of why the administration felt it to be necessary to issue a joint declaration with the Soviet Union at this time. Does it have assurances that the Soviet Union is ready to abandon its traditional approach of "fishing in troubled waters" in the Middle East. Is Moscow ready to eschew a policy of "no war-no peace" in the Middle East? Will it abandon its effort to increase its influence in the area at the expense of the suffering of both Arab and Jew?

What did the administration receive in return for its willingness to accept, at least implicitly, the view that Moscow should play a role equal to that of the United States in the negotiations process? I pose these questions because the joint statement and what it indicates about present administration thinking portends a willingness on the part of the administration to not only compensate for Soviet action in the Middle East but to encourage actively an upgrading of the Soviet influence in the negotiations process, even to the point of contemplating a Soviet military presence on the ground in the Middle East. What has occurred to make such an approach a reasonable alternative?

Mr. President, the latest initiatives of the administration on the Middle East have certainly complicated an already complex situation. The question that recurs again and again upon a reading of the joint statement is why this particular step? The Congress and the American people have a right to a detailed answer to this question.

I fear we may have embarked upon a course of action fraught with danger, not only for our traditional ally in the Midle East—Israel—but also for the Arab countries and ourselves. The creation of excessive expectations in the Arab world that cannot be fulfilled without the United States dishonoring its values and commitments can only lead to Arab disillusionment with the United States. This, in turn, will increase the incentives for mischief from those in the Middle East and elsewhere whose goals are far different than that of peaceful and productive relations between Israel and her Arab neighbors. The United States inevitably would be increasingly drawn into such a worsening situation.

I do not defer to anyone in the desire for peace between Israeli and Arab. Each has much to offer the other. But I am convinced that the only peace agreement that will last is one that they hammer out together. One imposed from without will not be able to withstand the inevitable frictions that will characterize the Middle East situation for many years to come. The administration claims it is not seeking an imposed settlement. Its latest actions raise serious questions as to the sincerity of its claim.

RUGGED NEW VISTAS FOR THE HANDICAPPED

Mr. PERCY. Mr. President, I would like to share with my colleagues an article from the May/June 1977 issue of Scouting magazine which was recently brought to my attention by Mr. William McCahill, chairman of the National Advisory Committee on Scouting for the Handicapped. The article entitled, "Rugged New Vistas for the Handicapped," which was written by Scout Leader Paul Brozak, is about his handicapped Scout troop from Ottawa, Ill. It is a dramatic example of why our handicapped citizens are today winning the respect of every American. This troop of nine handicapped boys earned their own travel expenses to the "Philmont Scout Ranch and Explorer Base" in Cimarron, N. Mex., and covered 58 miles of mountainous hiking in 12 days.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RUGGED NEW VISTAS FOR THE HANDICAPPED

(By Paul Brozak)

When you say "Philmont Scout Ranch and Explorer Base" you're likely to picture strapping kids rock hopping and threading Rocky Mountain trails 9,000-, 10,000-, 11,000-feet high. It's a place for Explorers and older Scouts who are used to working together and are self-dependent. The consequences of bringing any less-qualified kids could be for one of them to tumble down a graveled path, get lost in the wilderness or suffer acute homesickness.

So it would seem that Philmont is hardly the place to take a crew of physically and mentally handicapped youngsters—or is it?

If my experience with nine handicapped Explorers and two adult leaders is any indication, a trip to Philmont *can* be tailored to suit them. Our Sea Explorer ship is sponsored by Friendship House-Echo School, Inc., a work activity center for the handicapped located in Ottawa, Ill., about 80 miles west of Chicago. I serve as the Skipper.

When we asked Philmont's administrators about our Explorers coming to the New Mexico ranch, and assured them that no seriously physically handicapped Explorers would be climbing any mountains, they gave us an itinerary their planners felt our youngsters could handle. We were off and running.

After a car trip during which we tented out in private campgrounds or state parks, we arrived at Philmont. During our check-in, we met with Jeff Phipps and his parents. Some time before, Philmont had alerted Mr. and Mrs. Phipps that our ship would be attending. They asked if we would take Jeff, mentally handicapped, with us. We were flattered and

delighted to be able to say, "Yes, we'd love to have him."

Philmont ranger Kelly Reese was one key to our getting along well on the trail. He particularly asked to go with us. He helped us trim down our packloads by omitting unnecessary gear. His instructions, as for all rangers, were to remain with us until he felt we were doing well enough to continue on our own. Two days later he headed back to camping headquarters and we were alone.

The boys didn't disappoint us. They got organized into well-functioning crews. They pulled together as a team instead of acting as loners. This was a major accomplishment for them. We used Ponil camp in the north central part of the ranch as our base and set out on short trips from there.

Our Explorers tasted a variety of experiences. First, as we headed east to Indian Writings, we experienced a lofty elevation change of 800 feet after 1½ hours on the trail. Highlight of the day was the two burros along to help carry our gear. Our own wranglers, Rick Gaffney and Marne Cochran, took such gentle care of the animals that when we returned them, the staff reported that the burros were minus the usual cinch marks and sore spots. These injuries usually are the signs of greenhorns tightening the animals' straps too tightly or packing unbalanced loads on the burros.

We might have skipped the horseback riding as part of our Philmont adventure. But that would have cheated the boys. They had behaved so well that we took the chance. We were glad that we did. Jeff and all the other boys had the times of their lives—and no one got thrown from his mount.

Westward to Pueblano we headed. This campsite offers training in logging and pole climbing, use of the two-man saw and, as an extra, survival training where we learned about edible plants. Nobody leaves Philmont before he gets drenched by afternoon thunderstorms. We were no exception. The rain caused us to shorten our stay at Pueblano and to cancel our trip to Bent camp. On our return we were initiated into the Order of the Wet Boot. We forded swollen streams that the day before we had negotiated by jumping from rock to rock. Today the rocks were submerged.

Though we didn't hike much of the southern part of the ranch, we did tour it by van and short trips on foot. We even met the challenge of climbing Philmont's landmark, the 9,000-foot-high Tooth of Time. In five hours from our start we were atop the tooth, waving to tiny figures below.

We returned to camping headquarters after 58 miles of backpacking to check in our gear, clean up and prepare for our return home. While packing up we asked the boys how they felt about returning to Philmont. Marne Cochran's eyes sparkled as he thought of the highest peak on Philmont, the 12,441-foot-high, Baldy Mountain. Speaking for the whole crew he said, "Absolutely! Next year, Baldy Mountain!"

We capped the trip with an appearance at the adult training center. There our Sea Explorers decked out in dress white uniforms presented a formal boarding ship ceremony and reported on our trek to those attending the conference of Scouting for the Handicapped.

As we leaders reflected on our accomplishment of successfully helping nine handicapped Explorers through a rugged, delightful, 12-day-long Philmont experience, we arrived at several conclusions:

We consider that through our persistence and preparing our kids, another door had been opened to the handicapped.

Such a high-adventure trip helped immensely with our boys' social development. They advanced their self-confidence, and several showed that they were able to function well as crew leaders.

Our Philmont crew had worked hard to earn money for the trek. It was an excellent lesson for them to know they had helped pay their own way.

We hope that our success encourages other leaders to try those adventures that they once thought were impossible for the handicapped.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Robert T. O'Leary, of Montana, to be U.S. attorney for the district of Montana for the term of 4 years vice Thomas A. Olsen.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, October 12, 1977, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ORDER FOR RECESS UNTIL 8:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:45 a.m. tomorrow.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Finance Committee may have consent to meet daily inasmuch as it has the remaining legislation dealing with energy, and social security financing legislation, which has to be enacted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the General Legislation Subcommittee of the Armed Services Committee be authorized to meet during the session of the Senate on Thursday, October 6, to consider legislation on civil defense.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce may be authorized to meet until 12 noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

WORLD ASSEMBLY ON AGING AND WORLD YEAR ON AGING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 424.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 238) to express the sense of the Senate that the United States Delegation to the United Nations should work with the delegations of other member nations to call for a World Assembly on Aging and a World Year on Aging.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The preamble was agreed to.

The resolution, with the preamble, reads as follows:

Whereas the United Nations has within recent years intensified its research and information exchange activities relating to aging;

Whereas a question relating to broadening the United Nations program on aging will be considered this autumn at the thirty-second session of the General Assembly;

Whereas the discussion of such question will offer a timely forum for discussion of a proposal for a World Year on Aging and an intergovernmental Assembly on Aging;

Whereas recent United Nations reports provide impressive evidence that aging populations worldwide will cause widespread economic and social dislocations unless extensive and informed efforts are made to take full advantage of the beneficial and far-reaching opportunities afforded by an increase in the proportion of older persons; and

Whereas there is reason to believe that widespread support for a World Assembly and World Year on Aging can be developed among member nations of the United Nations: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should instruct the United States delegation to the United Nations to work with the delegations of other nations represented at the United Nations to call for a World Assembly on Aging and a World Year on Aging for not later than 1982.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–458), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

COMMITTEE ACTION

Senate Resolution 238 was unanimously approved by the Senate Foreign Relations Committee on September 19, 1977, and ordered favorably reported.

COMMITTEE COMMENTS

Aging is a worldwide phenomenon and will be one of the crucial social policy questions for the remainder of the 20th century. It is, therefore, important to recognize the social problems inherent in the increasing numbers of older people and their specialized needs. With the increasing emphasis on control of birth rates, better public health practices, and the increase in life expectancy, societies are being restructured by a disproportionate increase of older persons.

The purpose of this resolution is to urge the U.S. delegation to the United Nations (U.N.) to work with other member nations to convene a World Year on Aging and a World Assembly on Aging in 1982. The current General Assembly session is already scheduled to consider expansion of the U.N. research and information programs on aging.

Demographically, a revolution is underway. There will be both absolute and relative increases in worldwide aging populations. The U.N. notes there were 291 million people 60 years of age or older in 1970. By the year 2000 this population will increase to nearly 585 million people, an increase of 101 percent. However, the world's total population is estimated to increase only 80 percent, from 3.6 billion to 6.5 billion. The less-developed nations face a projected increase of 158 percent of those over 60 years of age as compared to their total population increases of 98 percent. Meanwhile, the developed countries will experience a total population increase of 33 percent, but the age 60 and older population will increase by 50 percent. Thus, there is a need for governments to consider the significant social and economic changes already taking place.

Although significant progress has been made in the relatively youthful science of gerontology, there has been, according to the U.N., "a lag in the application of the knowledge * * * to social policies." Thus, this resolution could provide the catalyst in bringing together the international community to cooperate on a universal problem.

A World Assembly on Aging, however, would not be simply an occasion for the exchange of research. Rather, political leaders, government specialists and citizens will gather to identify needs and resources, assist national governments in policy formulation, and better coordinate the actions of individual agencies of the U.N. system.

Cross-national policy discussions on aging, therefore, are desirable as the world approaches the 21st century. Existing social services and health practices will be drastically altered. Hence, a World Year and Assembly on Aging would enable nations to begin to confront this growing phenomenon.

Such international discussion on aging cannot take place until 1982 because other U.N. "international years" are scheduled in 1979 through 1981. "International Years" are a common U.N. practice and previous subjects have included population (1974), education (1970), women (1975), racism (1971), human rights (1968), and tourism (1967).

Specialized agencies of the U.N. have previously emphasized problems of the aging. The World Health Organization has examined the provision of health and social services. The International Labor Organization has stressed retirement and pension programs. The Food and Agriculture Organization has investigated the particular difficulties of the rural elderly. Three earlier U.N. General Assemblies have passed resolutions affirming concern about the elderly.

In addition, the U.N. Office at Geneva has held seminars on aging problems in various European countries since 1955.

The Department of State has stated that it:

"Fully believes the cause of the aging to be a worthy one and action by the U.N. in this area would be highly desirable. There is growing concern in the United States and elsewhere over the problems of the aging, and we support an exchange of views and information among countries on these problems in the U.N. context."

This resolution was unanimously supported by representatives of 15 private international organizations on aging at a meeting at the U.N. on September 8, 1977. Further the American Association of Retired Persons—the National Retired Teachers Association, the Association for Gerontology in Higher Education, the International Center for Social Gerontology, the National Council of Senior Citizens, Inc., the Urban Elderly Coalition, and the National Indian Council on Aging, Inc., have endorsed the resolution.

TRANSFER OF S. 1582 TO THE UNANIMOUS CONSENT CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there is a measure on the calendar that is cleared for action by unanimous consent. I ask, therefore, that the clerk transfer Calendar No. 425, S. 1582, to the Unanimous Consent Calendar.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

TRANSFER OF CERTAIN MEASURES FROM THE GENERAL ORDERS CALENDAR TO THE CALENDAR OF SUBJECTS ON THE TABLE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the following calendar orders be transferred from the General Orders Calendar to the Calendar of Subjects on the Table, with the understanding that they will retain the same status that they would otherwise hold on the General Orders Calendar: Calendar Nos. 4143, 144, 279, 336, 369, and 395.

This is with the proviso that at the beginning of the next session, those calendar orders are restored to their place on the General Orders Calendar.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

DISCHARGE OF COMMITTEE ON FINANCE FROM CONSIDERATION OF H.R. 4018

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be discharged from further consideration of H.R. 4018 and that all after the enacting clause be stricken and that the bill be placed on the calendar.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. STEVENS. It is my understanding that the last bill that was placed on the calendar was for the purpose of utilizing it for the utility rate reform bill.

Mr. ROBERT C. BYRD. Yes. H.R. 4018 has been placed on the calendar for the purpose of using it as the vehicle for the utility rate reform bill to be sent to conference. I am glad the Senator explained that for the record.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in adjournment for 10 seconds.

The motion was agreed to, and the Senate, at 7:07 p.m., on Wednesday, October 5, 1977, adjourned until 7:07 p.m., the same day.

AFTER ADJOURNMENT

WEDNESDAY, OCTOBER 5, 1977

The Senate met at 7:07 p.m., pursuant to adjournment, and was called to order by Hon. ADLAI E. STEVENSON, a Senator from the State of Illinois.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is morning business closed?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume consideration of the utility rate reform bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2114) to authorize Federal action to encourage energy conservation, efficiency, and equitable rates in public utility systems, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, that bill is the unfinished business now, is it not?

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

POST-CLOTURE FILIBUSTERS AND THE ROLE OF THE MAJORITY LEADER

Mr. PELL. Mr. President, the Senate's most recent experience during the past 2 weeks with the filibuster as a parlia-

mentary tactic has underscored dramatically the necessity of coming to grips with the problem.

I have great respect and admiration for our majority leader. He bears the heavy burden and the exacting responsibility of assuring that the Senate as an institution meets its constitutional obligations to conduct its policymaking legislative function. He bears at the same time the responsibility of assuring that the rights and privileges of each Senator, as an elected representative of the people, are preserved and protected. We all know that our majority leader is acutely aware of both of those responsibilities.

That dual responsibility—to the Senate as an institution and to individual Senators—will sometimes come into conflict, as they did so dramatically and traumatically during this past week. In this regard, after 13 days of the Senate making a spectacle of itself, I will not fault our majority leader for his handling of a situation that had to be resolved.

I believe, too, it is patently unfair to place this burden of balancing the rights of the Senate against the rights of a Senator solely on the shoulders of the majority leader.

The truth is that this conflict, this dilemma, is an institutional one, and each of us shares the responsibility of resolving it.

In my view, it is unfair and wrong to place leadership requirements on our leadership without providing at the same time, through the rules of the Senate, the procedures through which the leadership can fulfill those responsibilities.

It is my view, and one which I believe is widely shared in the Senate, that once the required majority of the Senate has invoked cloture, the Senate should proceed expeditiously to vote on and resolve the issues before it. Once cloture has been invoked, the Senate rules should not permit a minority to thwart indefinitely the will of the majority.

In the issue of the natural gas regulation, the subject of this most recent post-cloture filibuster, I was among those supporting and voting with the minority of the Senate. But even as a member of the minority, on this issue, I believe very strongly that the majority must be permitted to work its will.

Let us give due credit to our majority leader. After some sad experiences in the second session of the 94th Congress, the majority leader made strong efforts through the Committee on Rules and Administration of which he is a member, to revise our Senate rules so that dilatory, post-cloture tactics would not be permitted. He did not receive the strongest and broadest support in that effort. It is wrong for those who failed to provide strong support for needed rules changes to now criticize the majority leader for doing the very best with the Senate procedures provided, to end a post-cloture filibuster. I hope we will now see a renewed effort to strengthen our rules to prevent post-cloture filibusters.

The majority leader is a man who is totally dedicated to the interests of the Senate as an institution and also a leader who is not fearful of making hard choices. I for one respect him very much for these qualities.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow morning at 8:45.

After the two leaders have been recognized under the standing order, Mr. ALLEN will be recognized for not to exceed 15 minutes, after which, by unanimous consent, the Senate will resume consideration of the then unfinished business, the utility rate reform bill.

There will be rollcall votes throughout the day on that measure, and upon its disposition tomorrow, we hope to be able to go to the minimum wage bill, if indeed it is possible to pass that bill tomorrow evening. There is a possibility that the Senate would go instead of the DOD authorization bill, but that decision will have to be made tomorrow, upon the disposition of the Utility Rate Reform Act.

It is hoped by the leadership that before the week is out the Senate can complete action on those three measures, the utility rate reform bill, S. 2114; the minimum wage bill, S. 1871; and the Department of Defense authorization bill, S. 1863, in addition to other measures that may be cleared for action.

If action can be completed on all three of these bills by Friday night, there will be no Saturday session. In the event that is not possible, then there will be a Saturday session.

In any event, on Monday, which is Columbus Day, the Senate will be in session and doing business as usual with roll call votes.

RECESS UNTIL 8:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8:45 tomorrow morning.

The motion was agreed to; and at 7:10 p.m. the Senate recessed until tomorrow, Thursday, October 6, 1977, at 8:45 a.m.

HOUSE OF REPRESENTATIVES—*Wednesday, October 5, 1977*

The House met at 10 o'clock a.m.

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WRIGHT) laid before the House the following communication from the Speaker:

OCTOBER 5, 1977.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore for today.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Blessed is the nation whose God is the Lord. Let Thy mercy, O Lord, be upon us, according as we hope in Thee.—Psalms 33: 12, 22.

"God bless our native land!
Firm may she ever stand,
Through storm and night;
When the wild tempests rave,
Ruler of wind and wave,
Do Thou our country save
By Thy great might!

For her our prayer shall rise
To God, above the skies;
On Him we wait;
Thou who art ever nigh,
Guarding with watchful eye,
To Thee aloud we cry,
God save the state!

Not for this land alone,
But be Thy mercies shown
From shore to shore;
And may the nations see
That men should brothers be,
And form one family
The wide world o'er."

Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 6530. An act to amend the District of Columbia Self-Government and Governmental Reorganization Act with respect to the borrowing authority of the District of Columbia, and for other purposes;

H.R. 6951. An act to amend the Council on Wage and Price Stability Act to extend its termination date, and for other purposes; and

H.R. 9354. An act to amend the Act of August 25, 1958, with respect to staff allowances for former Presidents.

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 1060. An act to amend the Act of February 9, 1821, to restate the charter of The George Washington University.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is